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CURRENT TOPICS

Lord Porter

THE death of LORD PORTER on 13th February at the age of 79 removes from the legal scene one of whom Lord Simonds was able to say "There never was a judge of whose absolute fairness and determination to do justice according to law, counsel or litigant could be less in doubt." Called to the Bar in 1905, Lord Porter later specialised in commercial cases, taking silk in 1925. He became a King's Bench judge in 1934, and four years later was promoted directly to be a Lord of Appeal, an office he held until his resignation in 1954. Nevertheless he continued to assist the Appellate Committee from time to time, and indeed reports appear in this issue of two of the last appeals on which he was engaged. He will be remembered as a courteous, patient and distinguished judge who won the affection of all who appeared before him.

Confidence in the Administration of Justice

THE HOME SECRETARY'S written reply to a question in the Commons on 6th February on recent alleged miscarriages of justice deserved more public attention than it received. He refused to accept the assertion that there had been a series of recent miscarriages of justice, or that public confidence in the administration of justice had been impaired. He caused inquiries to be made into any case where it was alleged that a miscarriage of justice had taken place, and appropriate action was taken where there was sufficient reason to think that a person convicted of a crime did not in fact commit it. Mr. SIDNEY SILVERMAN'S question had referred to "the series of recent cases of miscarriages of justice occasioned by apparent failure to make proper inquiry and investigation, by false or mistaken identification and by other causes whereby public confidence in the administration of justice has been impaired." He asked if it was proposed to hold a judicial or other public inquiry to ascertain what further safeguards were required to ensure that the traditional safeguards of British justice against the conviction and punishment of innocent persons were maintained or strengthened. It is quite true that it would take a great deal to impair the public respect for the administration of justice, but it is also true that disclosures of more than one error occurring at about the same time tend to lessen that respect in those quarters where respect for the law is most needed. It is encouraging to have the Home Secretary's assurance that appropriate disciplinary action will be taken against any police officer whose conduct in the discharge of his duties has been blameworthy.

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Reports to Banks on Title

THE extent of the planning investigation which, in view of the provisions of the Town and Country Planning Act, 1947, The Law Society and the Clearing Banks agreed in September, 1949, a solicitor should ordinarily be expected to undertake when making a report to a bank on title was set out in a list of agreed questions and agreed minimum fees in the issue of the *Law Society's Gazette* for September, 1949. The February, 1950, *Gazette* contained recommendations as to the means whereby solicitors should endeavour to obtain the information to answer the questions, and in the May, 1950, issue the profession was advised not to forward the questions *en bloc* to local authorities. The questions have now been revised to meet the changes made by the Town and Country Planning Act, 1954, and the revised questions are published in the current issue of the *Gazette*, together with particulars of the minimum fees.

Gaming: The Royal Commission's Report

THE minor storm raised by Sir HENRY WILLINK'S recent letter to *The Times* on the Government's failure to implement the report in 1951 of the Royal Commission on Betting, Lotteries and Gaming (Cmd. 8190), of which he was chairman, may be allayed but not quelled by the Government's acknowledgment of error in the speech in the Lords on 8th February by LORD MANCROFT, the Under-Secretary of the Home Office. It had been on their conscience, apparently, but not on their programme, owing to the crowded state of the latter. LORD SILKIN, in calling the attention of the House to the report, moved for papers, and the Under-Secretary, in reply, gave the Government views in outline. There should be strict control, which should include the licensing or registration of all those providing gambling facilities. Secondly, the law should apply fairly to all sections of the community, a point of major importance in relation to street betting. Thirdly, as much information as possible should be given to the public as to the extent of gambling and the conduct of its various forms. The Government agreed generally with the object of the Commission's proposals, which were to legalise those forms of gaming which were in practice tolerated in spite of their illegality while continuing to prohibit the conduct of commercially organised gambling. Lord Mancroft could not undertake that legislation would be introduced to-morrow, but the Government had no intention of neglecting the report.

Poor Prisoners' Defence: Prisoners Jointly Charged

SOLICITORS are asked in the current issue of the *Law Society's Gazette* to bear in mind, when applying for their and counsels' fees under the Poor Prisoners' Defence (Fees and Expenses) Regulations, 1953, that where two or more prisoners are charged jointly, they may quite properly and reasonably apply for separate certificates in respect of each defendant. It has been brought to the notice of the Council that solicitors sometimes unwittingly add to the inequity of the present situation by applying for a single certificate in such cases. When ss. 21 to 23 of the Legal Aid and Advice Act, 1949, are brought into operation, solicitors and counsel acting under legal aid and defence certificates issued for the defence of poor prisoners will of course receive "fair remuneration according to the work actually and reasonably done."

LEGAL AID: WHAT NEXT?

THERE are some whose answer to this question would be "Nothing." With legal aid in the High Court and in the county courts (and in other courts corresponding thereto in jurisdiction) already in being, they would call a halt, in spite of the fact that the whole of the Legal Aid and Advice Act, 1949, has not yet been implemented. Nevertheless, the legal profession gave its full support to the Act in 1949 and should consider carefully before stopping short for an indefinite period. It does not follow, however, that the Act of 1949 is the embodiment of ultimate wisdom and it may be that its objects could be achieved in other and better ways. The publication of the Annual Report of The Law Society to the Lord Chancellor on the Legal Aid Scheme for 1954–55 (H.M. Stationery Office, 2s. 6d.), to which we referred briefly on p. 97 last week, provides the occasion to take stock, although it is unfortunate that it is always many months out of date when published and that statistically it is anticipated by the Council's Report to the members of the Society. The reason is that the Report to the Lord Chancellor must be submitted to and commented on by the Advisory Committee which is constituted by the Lord Chancellor under s. 13 of the 1949 Act as a kind of lay watchdog. Since most of the facts contained in the Report for 1954–55 are already well known, we do not propose to go over them again in detail in this article. Instead, we will follow our short note in last week's issue by review of some of the observations which the Advisory Committee make.

The effect of inflation

As we pointed out last week, the Legal Aid Scheme now appears to be running in top gear, and from the information at our disposal it does not appear that the extension of legal aid to the county courts is going to impose a very serious strain upon the administrative machine. For this there may be many reasons, the principal possibly being that the contributions at present required from assisted persons often exceed the likely cost of proceedings in the county court. The Advisory Committee remind us that only those whose "disposable income" is less than £420 per annum are eligible for legal aid and that this figure of £420 was the maximum recommended by the Rushcliffe Committee as long ago as 1945. Obviously the fall in the value of money since 1945 has resulted in the exclusion of many who Parliament intended should benefit from the Scheme even when the Act was passed in 1949. The Advisory Committee admit that any proposal to raise the figure above £420 would involve further public expenditure, and since they take the view that, if any further public money is to be spent, it should be spent on legal advice, they do not consider it advisable at the moment to pursue further any suggestion of raising the £420 limit. Some writers in the Press have been misled by the difference between the actual income of an assisted person and his "disposable income." In fact it is well known that some people whose "disposable income" is £8 per week may have an actual income of perhaps £12 or even more.

Possibility of expansion

Now that legal aid has been extended to the county courts, and assuming that there is for the moment to be no increase in the income limits, the question is whether there shall be any further extension, provided that the financial and economic policy of the Government permits it. There are three ways in which such extensions could be made. First, s. 21 of the Legal Aid and Advice Act, 1949, relating to the remuneration of solicitors and counsel in criminal proceedings could be brought into force. This would not materially help large numbers of persons accused of crimes, since solicitors and counsel already deal with their cases on a basis which can only be described as partly charitable. On the other hand, to bring the section into force would undoubtedly be of assistance to solicitors and counsel, but we doubt whether this argument will have very much impact on the Government. Secondly, the Act could be extended to cover civil proceedings in magistrates' courts, of which matrimonial proceedings are the most important. In our view this extension should receive very high priority, because wives who are not being maintained by their husbands are one of the most needy groups of people who require both legal advice and legal aid. If legal aid were available in matrimonial proceedings before the magistrates quite a substantial volume of work which is at present either not done at all or done by poor man's lawyers or by solicitors accepting greatly reduced fees would be done in return for proper remuneration. This matter is relevant also to the observations which we make later on legal advice.

The Advisory Committee, however, lay the greatest stress on advocating that ss. 5 and 7 of the Act shall be brought into force. These sections together would constitute the Legal Advice Scheme. Section 7 would authorise a scheme of legal advice in the generally accepted sense, while s. 5 would enable solicitors to conduct legally aided negotiations short of litigation, but only for persons whose contributions would be nil unless regulations provided otherwise. The Committee consider that not only is an advice scheme urgently necessary for the welfare of a large section of the public, but that it would produce substantial savings in the cost of the Legal Aid Scheme itself in that it would enable proper investigations to be made before applications are made. Cases, they say, would be presented in a form in which committees could more readily select the good case from the bad and thus avoid granting aid in unreasonable cases. We agree that some kind of advice scheme is a social necessity, but we think that the Committee are over-optimistic about the difference which it would make at all events in the form envisaged by the Act. Legal advisers could certainly save local secretaries a great deal of correspondence and time, but it is doubtful whether they could, with the resources which the Act envisages, in themselves greatly improve the quality of the presentation of the cases. In our view, General Regulation 11 in its amended form is a much stronger safeguard against unreasonable cases than a Legal Advice Scheme would be, since very often the unreasonableness of a case only appears after proceedings have been begun.

No more bureaux

This is a secondary argument and does not diminish the weight of the case in favour of establishing a scheme whereby legal advice can be obtained by those who cannot, or think they cannot, afford to pay to consult a solicitor. This, however, does not necessarily prove the need to establish a scheme such as is envisaged by s. 7 of the 1949 Act. Subsection (2) of this section provides that "the advice shall consist of oral advice on legal questions given by a solicitor employed whole time or part time for the purpose and shall include help in preparing an application for legal aid . . ." Thus it seems that any scheme established under the Act in its present form would involve the employment of solicitors specially for the purpose of giving advice, whether they were employed whole time and paid salaries or whether they were normally in private practice and engaged for sessions and paid sessional fees. It is doubtful whether this type of scheme would give the public the best possible service and also doubtful whether it would be necessarily the most economical way of doing the job. In an article in the SOLICITORS' JOURNAL on 21st August, 1954 (98 SOL. J. 565) the present writer developed the arguments in favour of using for the Legal Advice Scheme the people most capable and best equipped to give advice—solicitors in private practice in their own offices. We will not repeat the whole of the arguments put forward in that article, but merely summarise them.

First, a separate scheme as envisaged by the Act would require some form of administrative organisation, and possibly in the sparsely populated areas a considerable amount of wasted time. Itinerant solicitors might well spend a long time travelling and might find when they got to their destination that they had few or no clients. The same argument would apply to the solicitor paid a fee for a session, since it is not the normal practice for persons attending at poor man's lawyer centres to make appointments, and there is no reason to suppose that the same people would change their habits.

Secondly, it is unlikely that salaried solicitors, particularly those who had to travel, could be as well equipped as a firm of solicitors in private practice to give advice on the wide range of questions which are asked. It is true from experience at poor man's lawyer centres that a sound working knowledge of the law of husband and wife, of the Rent Acts, and of hire-purchase legislation can carry a poor man's lawyer a very long way, but few solicitors would deny that these three branches of the law are among the most complicated upon which they have to advise. Only where a solicitor has a library readily available would he be able to consult all the authorities which might be necessary for him to give an accurate opinion. A solicitor on the move could not carry a library with him, and if legal advice is only going to be available in such centres of population as can maintain a library, large numbers of people would have to travel very long distances. As these are the very people who cannot afford to go to a solicitor's office it is unlikely that they would have the money to travel a long distance to get to the legal advice centre.

Thirdly, salaried solicitors in whole time employment would tend to be comparatively inexperienced and would often be working on their own. It is difficult to see that a career in the legal advice service would offer inducements to more than a very small number.

Fourthly, except in the large centres of population it would only be practicable to arrange for the attendance of a legal adviser at intervals and this, again, would give rise to serious inconvenience and delay.

Are we worse than dentists?

All these objections could be met by enabling solicitors in private practice, of whom there are some even in quite small towns and many villages, to give advice in their offices under

a legal advice scheme. Already we find no difficulty in running medical and dental services under the National Health Service by enabling patients to visit their doctors or dentists in their ordinary surgeries. Solicitors in private practice would be accessible, would have libraries available and would be experienced.

The only difficulty in the way of such a scheme is financial. Section 7 of the 1949 Act mentions a fee of 2s. 6d., but goes on to provide that the fee could be such as may be prescribed by regulations. While it is true that there are substantial numbers of people in the country to-day who cannot afford more than 2s. 6d., and even some who cannot afford as much as that, the fact remains that, as was pointed out in the previous article from which we have already quoted, there are many more people to-day who, by taking thought and making no inroad into the necessities of life, can put their hands on as much as 10s. The main inhibition which most people have about going into a solicitor's office is that they cannot foresee how much it is all going to cost them in the end. If it became known that anyone who wished could go into a solicitor's office and obtain advice of the character which is envisaged by s. 7 of the 1949 Act for a fee which would not exceed 10s. without further reference to the applicant, we think that this inhibition would largely disappear. Again quoting from the previous article, all solicitors who deal regularly with people of small means know of the relief which it gives their clients to be told that costs exceeding a certain figure will not be incurred without their express authority.

The very poor

We believe, therefore, that a very large number of people who at present are either not receiving advice which they need or are having to obtain it at considerable difficulty and inconvenience from poor man's lawyers, who sit in places not always easily accessible and at times which are not always convenient, could be served by a scheme which provided that any solicitor who cared to join it would be available to give advice for a fee of 10s. There would remain, of course, a substantial number of people for whom a fee of 10s. would be a hardship. The most important among these are the unmaintained wives, but if the proposals which we have already made for extending legal aid to civil proceedings before the magistrates were adopted this category could be left out of account. There would remain a further category of pensioners of one kind and another, who could produce evidence of need in the form of a pension book. Finally, there would be a category of persons in need who for various reasons do not possess a pension book. We suggest that those who do possess a pension book or other document should be included among those to whom advice could be given free without any inquiry into means merely by asking them to fill up a form with the number of their pension book on it; the solicitor would then draw his fee from the Legal Aid Fund on presentation of the form. Finally, the category of persons in need, but without documentary evidence thereof, would have to be dealt with by asking them to fill up a form and passing it to the National Assistance Board, as is the situation to-day with legal aid proper. It would probably be reasonable to give solicitors a discretion in such cases where the need appeared to be urgent.

Will we take the plunge?

It appears to us that so far as the consumer is concerned, this system would be much more satisfactory than that envisaged by the Act. So far as the Government is concerned, we think it would probably be found to be more economical. The only question which remains, therefore, is whether a sufficient number of solicitors would be prepared to hold themselves out as willing to join the scheme and to give advice for the prescribed fee of 10s.

If the Government favour the idea in principle, the profession will have to answer these questions. First, are we in favour of some formal and advertised scheme, or are we content with the present situation? If we think that some scheme is necessary, are we content that it should be administered separately from our ordinary practices by salaried solicitors working within an administrative machine, albeit the efficient machine which the Council of The Law Society have built up? If we think that we can in fact provide a legal advice centre in every place where there is a solicitor's office more economically and possibly more efficiently than any scheme envisaged by the Act, is there any reason for delay?

The Divorce Department

We have set out at some length the arguments in favour of keeping advice firmly in the hands of private practitioners. Another topic which the Advisory Committee discuss is the continued existence of the Divorce Department. The need to conserve public money is such that it is not possible to argue convincingly against the proposition that, if the Department can conduct matrimonial cases much more economically than can private practitioners, it should continue to do so in those cases where the assisted person makes no contribution and the prospects of obtaining anything out of the other party are not good. In passing, it is relevant to observe that during the financial year 1954–55 the Department contrived to recover no less than £74,049 8s. 4d. in costs. In the past there has been no doubt that the Department has been able to conduct its cases more cheaply than the private practitioner. In our short note last week we mentioned that the average cost of a Department case is estimated to be £49 against £75 for a privately conducted case. It is not clear whether the £75 is before or after the deduction of the 15 per cent., but we should have made it quite clear that this figure is inclusive of all counsel's fees and other disbursements. The numbers of matrimonial cases are falling and on the basis of the cases allocated to the Department during the year instead of the number closed the average cost of a Department case is estimated by the Advisory Committee to be £57. The gap is narrowing, but even if the number of cases continues to diminish the Council of The Law Society do not consider that it is likely that any further disbandments of units can safely be undertaken owing to the need to provide full geographical cover for the whole of the country. At present the number of units is twenty-four, which means that a large number of assisted persons whose cases are conducted by the Department must live quite a long distance away from their conducting solicitors. In order to reduce hardship and expense to assisted persons arising from this fact, it has been the practice of the solicitors of the Divorce Department to visit the larger towns near their offices when necessary. If the financial gap between the Department and the private practitioner narrows any more, the question will arise whether it is worth while keeping the Department in being any longer. Many solicitors have criticised the continuation of the Department ever since 1950 on the ground that it has taken bread out of their mouths. It is only fair to remember that the Act of 1949 created quite a large amount of bread for solicitors which otherwise would not have existed and the Department has not so much taken it out of our mouths as kept it out temporarily. Matrimonial cases do not produce a return commensurate with conveyancing and in our note last week

we said that many practitioners would be happier if they could count on an average of £75 in profit costs for each matrimonial case. Measured in terms of conveyancing time and costs this would be reasonable. It seems as though conveyancing will continue to subsidise divorce and other litigation indefinitely. We have never been able to understand why people who buy and sell houses should be required to pay a levy for the benefit of those who become involved in disputes, matrimonial or otherwise. This, however, is a larger question beyond the scope of this article.

Our answer to the question "What next?" would be: first, legal aid in civil proceedings before the magistrates; secondly, a legal advice scheme run by the profession on a ten shilling basis, with a subvention from public funds only for those persons who can prove need; thirdly, State responsibility for the costs of successful unassisted parties, at least in cases of hardship; fourthly, proper pay for criminal work; finally, the liquidation of the Divorce Department.

P. Asterley Jones.

THE SLUM CLEARANCE (COMPENSATION) BILL

This Bill, introduced in the House of Commons on 8th February, as promised by the Minister of Housing and Local Government on 13th December last, "makes additional provision for payments in respect of" houses cleared by a local authority in pursuance of slum clearance schemes. The provisions of the Bill are somewhat technical and involved, but conveyancers acting for "slum owners" will not be able to ignore them for the next few years.

How the Bill applies

The substance of the Bill is contained in three clauses, of which the most important is the first. This clause applies to:—

(*a*) *A "house"*—an expression to be understood in the sense used in the Housing Act, 1936, so that it includes any yard, garden and appurtenances, etc., belonging thereto, and also "any building constructed or adapted wholly or partly as, or for the purposes of, a dwelling" (cl. 4 (1));

(*b*) *which on 13th December, 1955, was wholly or partly occupied as a private dwelling*—this term is not defined;

(*c*) *by a person (or by a member of the family of a person) who acquired an interest in the house by purchase for value*—"family" is precisely defined in cl. 4 (1), and questions as to whether brothers and sisters, lodgers and housekeepers, etc., are to be included cannot arise as they have done under the Rent Acts. The words "for value" make it clear that "purchase" cannot be understood in the technical conveyancer's sense, and "interest" is defined to exclude the interest of a tenant for a year or less, or of a statutory tenant under the Rent Acts;

(*d*) *during the "material period," i.e.*, between 1st September, 1939, and 13th December, 1955 (*or*, if this date was earlier, the date when the relevant clearance area was declared, or order was made—see cl. 4 (1)).

Provided (*a*) to (*d*) are satisfied, then compensation will be payable under the Bill if slum clearance action is taken by the local authority under the Housing Act, 1936, in respect of that house within a period ending on 13th December, 1965. By "slum clearance action," we intend to include the compulsory acquisition of the house under any of the provisions of Pt. III of the Housing Act, 1936, or s. 16 thereof (in all of which cases compensation, apart from the Bill, is payable on the basis of site value only: see ss. 40 (1) and 16 (4) of the 1936 Act), and also the vacation of a house "in pursuance of [an expression which must, it is submitted, include a "voluntary" vacation as well as a vacation in response to action under s. 155 or s. 14 of the 1936 Act] a clearance order, demolition order or closing order."

These expressions also are defined in the Bill; "clearance order" means such an order made under s. 26 of the 1936 Act, and there is no other kind of clearance order known to housing law. "Demolition order," however, is confined to such an order made under s. 11 of the 1936 Act (or under s. 10 (3) of the Local Government (Miscellaneous Provisions) Act, 1953), and this Bill will not apply in the case of a demolition order made in respect of an obstructive building under s. 54 of the 1936 Act; this will not cause any injustice, as s. 55 (unlike s. 11 or s. 13) already makes provision for compensation to be paid in such a case. "Closing order" means such an order made under s. 10 of the Local Government (Miscellaneous Provisions) Act, 1953, in lieu of a demolition order, and does *not* include a closing order made under s. 12 in respect of part of a building. More surprisingly, the term is also not to include a closing order made in lieu of a demolition order under s. 3 of the Housing Act, 1949, in respect of a house of special architectural or historic interest and protected as such; this seems to be an omission in the Bill which ought to be rectified.

Under the existing law, such a compulsory acquisition will entitle the owner to compensation at site value only, and such a clearance order, demolition order or closing order will not entitle the owner to claim any compensation at all, as the site (or the "closed" building) will be left with him.

The basis of compensation

Clause 1 requires compensation to be paid in these cases *provided* the person above referred to (or a member of his family) is still entitled to an interest in the house at the time when it is compulsorily acquired or vacated, on the basis of the full compulsory purchase value (not, it is submitted, quite the same thing in all cases as the expression "current market value for its existing use," as the rules of the Acquisition of Land (Assessment of Compensation) Act, 1919, have to be taken into account), *less* the *site value*. In the case of a compulsory acquisition, the site value would of course be payable in addition under the existing law.

In the case of a closing order, it seems that the owner may in some circumstances obtain more compensation than is really fair. He will be able to claim the full value of the house, less only the site value; but a closed house may in fact have a considerable value above that as a cleared site—for example, it may be capable of being used as a store without substantial alteration, provided the local authority's approval and planning permission can be obtained (usually no very great stumbling block in these cases). This is perhaps a point that should be examined by Parliament before the Bill becomes law. If the house is partly used for other purposes at the time of the making of the order, any

extra value in respect thereof must be deducted from the compensation (cl. 1 (1), proviso).

Business premises

Clause 2 deals with payments in respect of business premises in unfit houses, applying the principles of cl. 1 to such cases. This clause applies subject to the general conditions above mentioned, but the business must have been established continuously for ten years prior to the making of the order, or have been in existence on 13th December, 1955. In these cases the "full compulsory purchase value of the interest" must be paid by way of compensation, less site value, and this will therefore cover disturbance, thereby strengthening the claimant's position—under the existing law he can claim only an *ex gratia* payment under s. 44 of the 1936 Act, which is in practice paid only in cases of substantial hardship.

"Well-maintained houses"

Clause 3 deals with "well-maintained houses." Under the existing law, s. 42 of the 1936 Act requires the local authority to make a special payment in respect of a house certified by the Minister to be a "well-maintained house"; this payment at present amounts to one-and-a-half times the rateable value (or three times if the house is owner-occupied). In spite of the impending increases of rateable values (although these may well not be great in the case of a "slum" house) on the coming into operation of the new valuation lists on 1st April, 1956, it is apparently considered that these figures are not enough. This clause therefore empowers the Minister to make regulations varying the "multipliers" of the rateable value in s. 42 of the 1936 Act. It is also provided that a "well-maintained house" payment may be made in a case where a demolition order (as above defined), a closing order (also as above defined), or a compulsory purchase order made in lieu of a demolition order under s. 3 of the Housing Repairs and Rents Act, 1954, is made; under the existing law such a payment is payable in respect only of cases falling under Pt. III of the 1936 Act. A "well-maintained house" payment will not be available to any claimant who has received (or is entitled to) compensation under cl. 1 or cl. 2 of the Bill.

The Bill is clearly to some extent a political measure, but it will be welcomed by most local authorities who are aware of the hardships that have arisen in respect of slum clearance acquisitions in the last few years. In the immediate post-war years many persons of small means who were desperate to obtain housing accommodation purchased, perhaps with their entire life savings, a sub-standard house at an inflated price. The present Bill will give such cases some measure of relief; but, of course, when the market value of the house is assessed, the existing condition must still be taken into account, and the Bill will not give compensation at (say) 1946 or 1947 prices, nor will the owner necessarily get what he gave for the house. That somewhat unfairly maligned member of the community, the "slum landlord," will not benefit at all, as only occupiers qualify for the extra compensation—and his occupier, normally a weekly tenant, is similarly not entitled to claim.

J. F. G.

SUMMARY JURISDICTION: SOME ACTS OF 1955

Compared with previous years, 1955 produced little legislation affecting the law administered in magistrates' courts.

The Food and Drugs Act, 1955, came into operation on 1st January, and was the subject of an article at p. 4, *ante*.

The Oil in Navigable Waters Act, 1955, was passed to give effect to an international convention for the prevention of pollution of the sea by oil and a number of offences, triable summarily, are punishable under it. Section 12 restricts prosecutions for certain offences save by certain authorities, and extends the time limits where a person to be charged is outside the United Kingdom and giving extended venue. The Oil in Navigable Waters Act, 1922, is repealed and replaced. The Act of 1955 has not yet come into operation.

The Children and Young Persons (Harmful Publications) Act, 1955, imposes penalties for printing, publishing or selling or possessing for such purposes books or magazines of a kind likely to fall into the hands of juveniles and consisting wholly or mainly of stories told in pictures, with or without written matter, portraying the commission of crimes, acts of violence or cruelty or incidents of a horrible or repulsive nature, which would tend to corrupt juveniles. It would be a defence for a seller that he had not examined the contents of the work and had no reasonable cause to suspect that it was one to which the Act applies. By s. 3, justices may grant search warrants for infringing works and by s. 4 importation of works to which the Act applies is prohibited. The latter section creates no offence, however. Prosecutions for publishing or selling, etc., what may be called "horror comics" may not be instituted except by or with the consent of the Attorney-General and are triable summarily, with a right for the defendant to claim trial by jury. Infringing works may be forfeited. The Act is now in force and will continue in force until 31st December, 1965, and will then expire, unless Parliament otherwise determines.

The Army Act will come into operation on 1st January, 1957. This is a long Act containing 226 sections and seven schedules and is concerned with the discipline of the Army, terms of service, military offences and their trial, wife and child maintenance liabilities, persons assisting deserters and other offences relating to the Army committed by civilians including the unlawful purchase of military stores. The Act will replace the present Army Act with amendments.

The Air Force Act, 1955, is an Act of almost equal length and is in similar terms to the Army Act. Likewise, it will come into operation on 1st January, 1957.

The Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955, which will come into operation on 1st January, 1957, contains transitional provisions in connection with the expiry of the present Army and Air Force Acts and amends certain enactments as a consequence of the passing of the two above-mentioned Acts.

The Rating and Valuation (Miscellaneous Provisions) Act, 1955, is now in operation and by s. 13 it enables the Minister of Housing and Local Government to make an order regulating the fees, charges and expenses for levying a distress for rates.

The Diplomatic Immunities Restriction Act, 1955, enables diplomatic immunity to be withdrawn by Order of Council from members of the diplomatic missions of foreign sovereign powers and their families and servants and members of the official staff of such envoys and their families, where it appears that the country concerned does not confer like immunities on British envoys, etc., there.

G. S. W.

A Conveyancer's Diary

COVENANTS FOR TITLE IMPLIED IN DEMISE

THERE are two ways in which covenants for title may be implied in an instrument. The first is by statute, by the use of certain expressions descriptive of the capacity in which the grantor is expressed to convey, etc. This is not so much a case of implication, in the strict sense of the word, as of a convenient form of abbreviated conveyancing language: the expressions "as beneficial owner," "as trustee" and the like have no meaning except that which is given to them by the statute. The other way is that in which at common law, quite apart from statute, a mere demise without more may raise certain covenants for title against the grantor. It is with the latter kind of implication of covenants that the interesting case of *Miller* v. *Emcer Products, Ltd.* [1956] 2 W.L.R. 267 and p. 74, *ante*, was concerned.

In a demise for a term of years of the ground floor of a block of business premises the parcels were described as including the right for the tenant to use in common with certain others the lavatories on the first and second floors of the block. The lease contained a covenant for quiet enjoyment without any interruption by the landlord or the superior landlords or any person rightfully claiming under or in trust for the landlord or the superior landlords. This demise was contained in a sub-underlease granted to the plaintiff, and the superior landlords referred to in this covenant were the grantors of an underlease under which the landlord held. When the tenant entered into possession he found that the second-floor lavatories mentioned in the sub-underlease were locked and that he could not use them, and this state of affairs continued until action brought. These lavatories were kept locked and used by the tenant of another floor of the block, and had been included in an earlier lease to that tenant which had been granted under a title anterior to the title of the superior landlords mentioned in the sub-underlease. Being unable to exercise the rights granted to him by that sub-underlease, the plaintiff issued a writ against his landlord claiming damages for breach of the landlord's implied covenants for title. The covenants which, it was pleaded in his statement of claim, were implied on the part of the defendant were, first, a covenant that the defendant had a good right to demise the use of the lavatories in question, and further or in the alternative a covenant that the defendant would put the plaintiff in possession or enjoyment of such right. The landlord's defence was that the express covenant for quiet enjoyment contained in the sub-underlease excluded any such implied covenants. Danckwerts, J., upheld this defence and dismissed the action, and the Court of Appeal dismissed the appeal from this judgment. The considered judgment of the Court of Appeal (Lord Evershed, M.R., Birkett and Romer, L.JJ.) was given by Romer, L.J.

Agreement to grant licence or easement?

A point which had not been pleaded was first dealt with. It was suggested that as the defendant had, as it had turned out, no title to grant to the plaintiff the right to use the lavatories in question, the purported grant of this right amounted to no more than an agreement to grant a licence or an easement, and that the plaintiff was entitled to damages for breach of this agreement. The court's view on this point was that it was impossible to construe the express grant to use the lavatories as a contract to make a grant in the future merely because it subsequently transpired that the lessor had no title. This grant was treated by the court as the grant of an easement, on the analogy of *Heywood* v. *Mallalieu* (1883), 25 Ch. D. 357, where a right to use a neighbour's kitchen for washing had been assumed without question to constitute a valid easement. On this point it may also be said that if the plaintiff's contention had been accepted the utility of the commonly implied covenants for title, or at least some of them, would automatically have been much impaired. It is only when it is subsequently discovered that there was no title to make a grant that the grantee looks to these covenants for some means of redress.

In this part of the decision, Romer, L.J., referred to an agreement to grant "a licence or an easement," without differentiating between the one and the other. No such differentiation was, of course, necessary, on the view which the court took of the construction of the express grant of the right here in question. But the juxtaposition of the two expressions in this way inevitably invites consideration of the difference between licences (licences, that is to say, in the nature of easements) and easements. In language there is none: expressions like "full right, liberty and licence" appear in all the books of precedents as appropriate for the grant of an easement. And in another respect there is no difference between the two: neither confers upon the grantee any right to the possession of the soil. It used, moreover, to be said that a licence to enter or enjoy in any way land was always revocable unless it was coupled with an interest. As a result of the *Winter Garden Theatre* case (*Winter Garden Theatre (London), Ltd.* v. *Millennium Productions, Ltd.* [1948] A.C. 173) we know now that this proposition was founded upon an erroneous reading of *Wood* v. *Leadbitter* (1845), 13 M. & W. 838. A licence may therefore now be granted in terms which make it irrevocable as between the parties. The only essential difference between a licence and an easement which remains and is applicable in all circumstances is that an easement is enforceable only by the owner or occupier of the dominant tenement against the owner or occupier of the servient tenement, whereas a licence can exist, as it were, in gross. The importance of this distinction is that if it is ever desired to grant, e.g., a right of way at the will of the grantor, it is not sufficient merely to use the word "licence" in the grant instead of words such as "right" or "easement"; if the requirements necessary for the grant of an easement should exist as between the parties, such as the existence of dominant and servient tenements, such a grant is capable of being construed as the grant of an easement howsoever described by the parties, and on that footing the right would endure for the period of the grant, which may well be in perpetuity. It is necessary to make it absolutely clear that the right granted is revocable at any time, or in the particular circumstances of the case, as required.

Effect of express covenant for quiet enjoyment

To return to *Miller* v. *Emcer Products, Ltd.* Having held that the sub-underlease contained the grant of a valid easement, and having dealt with a point of construction on the language of the instrument, the court turned to the

substantial argument of the plaintiff, viz., that there were covenants implied in the lease which the defendant had failed to perform. The court accepted as well founded a passage from Woodfall on Landlord and Tenant (25th ed., p. 673) in the following terms: "Where there is an *actual demise* for one year or more, the lessor impliedly contracts to give the lessee possession at the commencement of the term, and if he fails to do so, by reason of a previous tenant holding over, the lessee may recover damages, and is not driven to bring ejectment against the previous tenant." The covenant which is implied in these circumstances was explained in *Line* v. *Stephenson* (1838), 4 Bing. N.C. 678; 5 Bing. N.C. 183, as being not so much a duplex covenant of title to grant a lease and for quiet enjoyment as a single covenant which, in the words of Romer, L.J., may be broken either by want of title or by the eviction of the tenant. It was also, however, decided in that case that there is no room for the implication of the covenant in a demise if the lessor enters into an express covenant for quiet enjoyment.

This difficulty the plaintiff attempted to side-step by arguing that the implied promise by a lessor to put his tenant into possession at the commencement of the term, which was mentioned in the passage from Woodfall which has been quoted, has an existence of its own independent either of the covenant for title or that for quiet enjoyment, and that it is accordingly unaffected by the principle in *Line* v. *Stephenson*. The substantial answer to this (the point was closely argued and the reasons given by the court for rejecting it are complex and to some extent overlap one another) was that the liability which is imposed by the covenant for quiet enjoyment on a lessor is one which entitles the tenant to be put into possession of the premises at the commencement of the term as well as to remain in peaceful possession during the term. The result was, therefore, that the express covenant negatived the implication of any covenant wider than the express covenant, which being qualified in the way in which it was did not extend to give the tenant any remedy in the particular circumstances.

There is a full analysis in this part of the decision of the cases on this question of the implication of covenants in demises, and it would seem that the law on this question has not only been clarified by this decision but has also perhaps had its possible area of application reduced. There is room now for implied covenants on this principle only in demises for a year or more which contain no express covenant, qualified or unqualified, for quiet enjoyment.

Obligation to put tenant in possession of easement

There is one further point of some interest to be noted on this decision. Before dismissing the plaintiff's argument that a covenant imposing on the landlord an obligation to put his tenant in possession of the easement claimed be implied in his favour, in the manner already indicated, Romer, L.J., expressed doubt whether an obligation to put a tenant in possession of the demised premises extended to an easement such as the right to use a lavatory in common with other people; no question of exclusive possession can arise in the case of a right to share the use of part of premises, and the landlord was neither able nor obliged to put his tenant in sole possession of that part at the beginning of the tenancy. It was unnecessary to decide this point, and these observations were therefore *obiter*. It may be that on another occasion they will need examination. Romer, L.J., referred expressly to the right in question in this case as a right to share the use of premises, but in one way or another every easement involves the sharing of premises. The infringement of a right of possession to land sounds in trespass, and the infringement of a right of enjoyment of an incorporeal hereditament sounds in case, and it may be that there is here a distinction of substance which deprives the grantee of an easement of any right to resort against his grantor on a covenant for quiet enjoyment if he is unable to commence to enjoy the easement through the intervention of a third party. If the third party's title is superior, that may leave the grantee of the easement without any redress whatsoever. These observations of the court, although made in the course of a decision on a demise, are not confined to cases of demises; they would apply equally to grants of an easement in fee or for any interest.

"A B C"

Landlord and Tenant Notebook

REPAIRS INCREASE: EFFECT OF ELECTION

To illustrate one point and to decide another may be said to have been the functions of *Jackson* v. *Croucher* [1956] 2 W.L.R. 331; *ante*, p. 73 (C.A.): it illustrated the discretion to amend defective notices under the Housing Repairs and Rents Act, 1954, and decided that an election not to be responsible for internal decorative repairs can effectively be made although, the premises being subject to "old control," rent has already been increased by the full 25 per cent. of the net rent, and that the latter increase will hold good.

The defective notice

The first point, called by Evershed, M.R., the "calculation point," arose in this way: s. 23 authorises increases in recoverable rent; s. 24 provides that rent, excluding, *inter alia*, any amount payable by the landlord for rates, is not to be increased above twice the gross value of the dwelling-house; s. 25 stipulates for service of notices and declarations in the prescribed form as a condition of recovering increases. The landlords in *Jackson* v. *Croucher* served a notice in Form R.R.3. This sets out the recoverable rent and the repairs increase, which are followed by matter headed "Calculation of repairs increase." Here the landlord has to state the maximum repairs increase of twice the statutory repairs deduction, and then come amounts which are to be deducted: "(i) a proportionate part of maximum repairs increase corresponding to the tenant's share (if any) of the burden of repairs, which is per cent.; and (ii) a further amount (if any) calculated in the manner set out below to ensure that the recoverable rent, excluding the amounts set out below but including the repairs increase, does not exceed twice the gross value of the premises." What has to be calculated "in the manner set out below" consists of the amount payable by the landlord for rates for the current rating period, the part of rent which represents payment for furniture or services, and the part representing payment for improvements, etc.

The notice served by the landlords fulfilled the requirements as regards statement of existing rent and of repairs increase, also that of statement of maximum repairs increase; but the spaces, or at all events the second space, for stating the deductions had been left blank. And the figure given for total rent, £1 8s. 9d. (existing rent, £1 3s. 7d.; repairs increase, 5s. 2d.), would exceed twice the amount stated as gross value of the premises, £32, and therefore 7s. 8d. per week. But, rates payable by the landlords came to £25 5s. for the current period; after making the appropriate deduction, the "further amount" of (ii) would "ensure that the recoverable rent did not exceed twice the gross value of the premises."

The tenant contended that the omission to state the calculation by which the amount payable for rates reduced the amount to be compared with twice the gross value invalidated the notice, but admitted that the result would be nil. Whereupon the landlords (*a*) contended that as the tenant knew or ought to have known that no calculation was required, there was no defect; (*b*) alternatively, asked for leave to amend the notice pursuant to s. 25 (4) (*bona fide* mistake).

The county court judge accepted (*a*), but the Court of Appeal, taking the view that in some cases a tenant might thus be deprived of information which, as s. 23 (3) provides, it appears expedient to the Minister to impart to him, preferred to amend the notice ("and a notice amended by virtue of this subsection," says s. 25 (4), "shall have effect as a valid notice served on such date, not earlier than the date on which the original notice was served nor later than the date of amendment, as the court may direct").

Effect of election

Together with the notice (and declaration) the landlords had served a notice of election under s. 30 (3), i.e., electing that that subsection should apply. A landlord may take this course when neither he nor the tenant is under an express liability to carry out internal decorative repairs, and the effect is, *inter alia*, to reduce the amount of any repairs increase by one-third. (The notice of increase had duly deducted the one-third.) Another effect, according to one of the notes to the prescribed form, is that the landlord will not be responsible for keeping the interior of the premises in good decorative repair.

Now at some date in the distant past, the rent of the premises had been increased by 25 per cent. of the net rent under the Increase of Rent, etc., Restrictions Act, 1920, s. 2 (1) (*d*) (i): "where the landlord is responsible for the whole of the repair . . ." So the defendant contended that the plaintiffs were, in effect, saying in the same breath that they were solely responsible for all repairs and that they were not responsible for some repairs. It is, perhaps, not quite clear what the defendant sought to gain by making the point in the action before the court; but it appears to have been suggested that the notice would be invalid because it imposed—via s. 30 (3) (*c*)—a liability on the tenant. The paragraph says that when a notice of election is served the state of internal decorative repair is to be disregarded when determining—for the purposes of that Part of the Act—whether the dwelling-house is in good repair. If the tenant could not establish that this consideration made the notice a nullity, he could hardly complain.

The point was dealt with in this way—I quote the judgment of Evershed, M.R., the only reasoned judgment delivered: "It is tolerably clear that though the effect is expressly to limit the landlords' right to recover the increase under the Act of 1954 and though for that purpose it is right to make plain that the landlords repudiate responsibility for internal repairs as a matter of obligation, it still seems to me to remain inevitably true that by the express terms of s. 30 (1), since the tenant is under no express liability, the landlords, for the purposes of s. 2 (1) (*d*) of the Act of 1920, remain as between themselves and the tenant wholly responsible."

"For that purpose" and "for the purposes of" are obviously important qualifications. For what, the tenant and others may well wonder, is the effect of all this on the terms of a tenancy?

The contract of tenancy

In my submission the note to the prescribed form, and possibly the judgment, have misconceived the effect of the landlord's election on his contractual liability to the tenant. The section applies when neither party is under any express liability to carry out internal decorative repairs. The practical result of an agreement obliging neither party to do any repairs was once touched upon in *Broggi* v. *Robins* (1899), 15 T.L.R. 224; it amounted to this: when anything went wrong, and the tenants were too poor to put it right, the landlord would effect the repair; not necessarily out of sympathy, but certainly out of self-interest, i.e., to preserve a capital asset. More recently, in *Warren* v. *Keen* [1954] 1 Q.B. 15 (C.A.), Denning, L.J., gave examples of the "little jobs about the place" which such a tenant is impliedly obliged to do; they included nothing in the way of decorative repair. And, after *obiter dicta* on the effect of a notice of increase had been uttered in *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.), Goddard, J., when deciding *Wilchick* v. *Marks and Silverstone* [1934] 2 K.B. 56, held definitely that no modification of the terms of a tenancy was brought about by increasing the rent on the footing of liability. "I cannot see how the service of notices which is a condition precedent to raising the rent can affect the contract either of itself or by way of estoppel."

R. B.

Mr. R. H. Moon has been appointed assistant solicitor to the City and County of Bristol.

Mr. Griffith Owen George has been appointed deputy chairman of the Court of Quarter Sessions for the County of Glamorgan.

Mr. J. A. McDonald, junior assistant solicitor to Wigan Corporation, has been appointed senior assistant solicitor, in succession to Mr. G. L. Sturgess.

The name of Mr. Gordon Hume Mitchell, solicitor, of Old Broad Street, London, E.C.2, who was recently appointed Clerk of the Cutlers' Company, is as stated here and not as given at p. 95, *ante*.

Mr. Samuel Mottram, assistant solicitor, Middlesbrough, has been appointed senior solicitor, Oldham, in succession to Mr. D. B. Charlick.

Mr. David Edward Thornton Pennant has been appointed deputy chairman of the Court of Quarter Sessions for the County of Brecknock.

Mr. H. Sidebotham has been appointed Coroner for East Cheshire in succession to Mr. J. A. K. Ferns, who has retired.

Mr. G. L. Tatton, junior assistant solicitor, Ilford, has been appointed chief assistant solicitor, Cheltenham, in succession to Mr. J. B. Cooke, who has been appointed deputy town clerk, Halesowen.

HERE AND THERE

PIONEER AND SETTLED MAN

ADDRESSING the Authors' Club recently, Professor Goodhart drew some acute contrasts between the English and American conceptions of life and law. American ideas, he said, were still those of the pioneer in a new country breaking with the traditional way of doing things, while the Englishman was conditioned by his settled life in a densely populated country with a long tradition of peace. To the pioneer the social position of his ancestors was irrelevant; the social distinctions which he recognised were not hereditary: they were based upon success. The reward of success was a spur to energy so that the American hardly ever retired from business. Not feeling the same urgent spur, the Englishman was content to work less hard, to look forward to retirement and to pursue other objects which he thought might be of greater value than mere success. The American set great store by friendliness, a primary necessity to the pioneer who must be ready to form a group quickly in the face of danger. The Englishman preferred privacy. Professor Goodhart told a story of an Oxford don sharing a railway carriage with an American soldier who asked: "Can I talk to you?" Warily the startled don countered: "What about?" The American had not the Englishman's respect for law, as the pioneer did not like to be bound by legal rules, but in a settled community law was essential. Yet fundamentally both agreed on the basic principles of justice, freedom and common decency. If you care to watch the very process of law emerging in a pioneer community there is no better book to study than the courtroom recollections of James Mathers of Oklahoma recently published under the title "From Gun to Gavel." Here within the space of a single long lifetime you may see the sequences of a development which in England was spread over a period of something like seven centuries. As a lad of seventeen he rode posse with the sheriff of Ardmore to trap and shoot an outlaw, just as his mediæval equivalent might have ridden with the Sheriff of Nottingham into Sherwood Forest. Those were the days when the federal courts were just beginning to establish their authority in what had been segregated and more or less autonomous Indian territory—autonomous, that is, as far as the Indians were concerned, but utterly lawless for the intruding white men who settled among them. "Until 1889 there was just no way for a white man to sue another white man in the Territory. If a dispute arose over a cow or a horse or work to be done or a sum of money or a good-looking woman the parties settled it between themselves as best they could and sometimes—frequently, in fact—the settlement involved the use of ·45 revolvers." Then came the courts. We take the Old Bailey and the Assize courts as the natural and inevitable corollary of the police (our wonderful police). But they didn't find it so obvious as all that in the lawless territories. The desperate courage of the sheriffs and marshals was wasted "unless there was a fearless prosecutor to see that the charges against the prisoner were vigorously asserted. This necessitated an honest, impartial judge who was equally bold; and there could be no justice worthy of the name unless the rights of the accused person were competently protected by an energetic defence."

NO MASSACRE IN COURT

WHEN Mr. Mathers was appointed county attorney for Easter County after Oklahoma became the forty-sixth State in 1907, he inherited 322 federal murder cases from the U.S. attorney's office and over 600 assorted cases of rape, assault, armed robbery, rustling and the like. One of the murder cases had a sensational climax. On Christmas Eve Carl Gravely, a notorious "no good," belonging to a large clan of relatives like himself, got mad drunk and without provocation shot dead three very well liked farmers out doing their Christmas shopping. The trial came on, and on the second day an underground report reached Mr. Mathers, who was prosecuting, that the Gravely clan, fifteen strong, and the prisoner's sister, Molly Sizemore, planned to shoot judge, counsel and marshal and rescue the prisoner. After a consultation with the judge, a telegram was sent to Buck Garrett, the sheriff at Ardmore, to come at once with his wife and a dozen deputies. Next morning there were the Gravelys scattered about the court little realising that behind each of them sat a deputy. There was Molly Sizemore, a sullen dark-complexioned buxom woman, covered by Buck Garrett's wife, as demure as a schoolgirl, with a purse concealing a cocked ·45 aimed at the back of her head. (Mrs. Garrett had killed several men in her time "but always on the side of law and order.") The judge opened the proceedings: "It has come to my attention on good authority that there is a conspiracy under way to start a riot in this courtroom and kill your first district judge and prosecuting attorney and the prisoner's attorney and break the prisoner out of here. I think it's only fair to warn you that I'm not going to let you get away with it. We know who you are and I just want you to know that behind you right now is an officer of the law ready to shoot you dead on my authority if you so much as make one suspicious move. Now I want every one of you to get up quickly and leave the room. You can come back in but when you do you are going to be searched as you pass the door and no one will be admitted who has a gun of any kind." After the search there was a pile of about forty pistols beside each door. "It was funny to watch all the men sit there as though they were naked. They would self-consciously let their hands drop to their empty holsters and then fidget around just like their pants were unbuttoned."

TRUE FOR BOTH OF US

AND out of all this violence comes Mr. Mather's sane and solid conclusion: "I guess every man is prejudiced in favour of his own profession but I don't think anything surpasses the law. If a man is not secure in the peaceful enjoyment of his property and liberties it's pretty hard for him to have peace of soul and good health; and a lawyer's job is to help him attain this security. It is simply to help other people get along with their fellow men so that life can be more enjoyable for everyone. That's the lawyer's only reason for existence. It isn't to make money." But law can't do what it was never intended for. "We have attempted to substitute law for manners and morals, which just will not work. The tendency has been to try to legislate goodness and turn to the government for a law to solve all our human problems and ills, but that is not the purpose of law. Law is nothing more than human experience jelled enough to be expressed in the solid form of a statute or court decision. It sets only minimum standards of conduct and can never replace manners and morals which are the real controls on our relationships with our fellow men." These words are just as true in England as in America.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

"Compensation for Wrong Verdicts"

Sir,—I have delayed this letter in hope that one more qualified than I would take the point of it.

Your editorial comment on this subject in the issue of the JOURNAL for 28th January reflects the confused thinking of the lay popular Press.

The "compensation" is in truth at one and the same time miserably inadequate and extremely generous. This paradox is resolved by considering who caused the three men in question to be wrongly convicted and imprisoned and who paid the compensation.

It is not possible to place a monetary value on the injury done—and one can only hope and pray that the confession which led to the release of those wrongly imprisoned is a first step to something better on the part of the real offender.

The Crown and taxpayers, who paid the "compensation," do their best through the law officers, judges and juries to ensure that justice is done but do not guarantee that juries and judges will not be misled by false evidence. Any compensation, which they pay through the Treasury, is therefore a free gift and since it is paid without obligation on the part of the payers it is generous whatever the amount.

MAX C. BATTEN.

London, E.C.4.

The Poor Man's Lawyer

Sir,—One aspect of this topic calling for comment is the apparently semi-"official" air surrounding most of the free legal advice centres.

Each London borough council, sometimes by direct grant, at others by the provision of free accommodation, etc., assumes a certain responsibility in the eyes of the layman for the advice given and the idea is very prevalent that the advice provided at these centres is officially inspired and therefore of a superior authenticity to that obtainable from a private solicitor.

Frequently this leads those who can afford to consult a private solicitor first to attend at a free centre for advice as to which private solicitor it would be best for him or her to consult!

This may appear as quite harmless in itself, but it leads to abuse. At one centre the organiser told me that there had been thirty-six such inquiries that day, over one-half of whom were seeking a solicitor whose name they might insert in the legal aid application form as willing to conduct their case, the official of the Legal Aid Committee having previously explained to them that the choice of solicitor was a matter entirely for the applicant to decide upon.

It was then explained to me that the way for dealing with these inquirers was to produce to each a list of solicitors practising within the borough. "Are the inquirers any the wiser for that?" I inquired. "Not really," replied the organiser, "we have to make up their minds for them. We always make sure that they go to Mr. So-and-So." Mr. So-and-So, I later heard, was a relative of the organiser.

If voluntary centres are not to be closed altogether as redundant, they should show true independence and impartiality and avoid any necessity for reliance upon official support, confining their sphere of duty to the assistance of well-defined classes, e.g., old age pensioners and persons on National Assistance.

Private practitioners have all the opportunity they need for selfless endeavour in the normal course of their practice—and few, I am sure, if any, shirk it—but they would, I feel, prefer to avail themselves of it without at the same time knowing that there was one lawyer for the rich and another for the poor.

P. M. L.

London, S.W.7.

BOOKS RECEIVED

Brief Summary of the Important Provisions of Law Relating to Animal Welfare. By the Hon. Parliamentary Secretary of the Universities Federation for Animal Welfare. pp. iii and (with Index) 28. 1955. London: The Universities Federation for Animal Welfare. 6d. net.

Oyez Practice Notes No. 13: Notes on Chancery Practice. Third Edition. By F. G. R. JORDAN, solicitor. pp. 108. 1956. London: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

Your New Rates. By F. A. AMIES, B.A., F.C.I.S., F.R.V.A., Barrister-at-Law. pp. 39. 1956. London: "Rating and Income Tax." 3s. net.

Archbold's Criminal Pleading, Evidence and Practice. Thirty-Third Edition. Seventh Cumulative Supplement. Edited by T. R. FITZWALTER BUTLER, Barrister-at-Law, and MARSTON GARSIA, Barrister-at-Law. 1956. London: Sweet & Maxwell, Ltd.

Oyez Practice Notes No. 38: The Licensing Guide. By MICHAEL UNDERHILL, of Gray's Inn, Barrister-at-Law. pp. 47. 1956. London: The Solicitors' Law Stationery Society, Ltd. 6s. net.

The Principles of Executorship Accounts. Second Edition. By H. A. R. J. WILSON, F.C.A., F.S.A.A. pp. xii and (with Index) 158. 1956. London: H. F. L. (Publishers), Ltd. 15s. net.

An Introduction to Evidence. Second Edition. By G. D. NOKES, LL.D., of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law. pp. xxxvi and (with Index) 480. 1956. London: Sweet & Maxwell, Ltd. £1 17s. 6d. net.

Taylor's Principles and Practice of Medical Jurisprudence. Eleventh Edition. Volume 1. Edited by Sir SYDNEY SMITH, C.B.E., LL.D., M.D. (Edin.), F.R.C.P. (Edin.), Hon. M.D. (Louvain), D.P.H., F.R.S. (Edin.), assisted by KEITH SIMPSON, M.D. Lond. (Path.). pp. viii and (with Index) 626. 1956. London: J. & A. Churchill, Ltd. £3 10s. net.

Prison Was My Parish. By the Rev. BADEN P. H. BALL. pp. 252. 1956. London: William Heinemann, Ltd. 18s. net.

County Court Notebook. Fifth Edition. By ERSKINE POLLOCK, LL.B., Solicitor. pp. 28. 1956. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

Stamp Duties. By F. NYLAND, LL.B., Solicitor of the Supreme Court. pp. xxiii and (with Index) 261. 1956. London: Butterworth & Co. (Publishers), Ltd. £1 5s. net.

Principles and Practice of Planning, Compulsory Purchase and Rating Law. By M. R. R. DAVIES, Ph.D. (Cantab.), LL.M. (Leeds), D.P.A. (London), of the Middle Temple, Barrister-at-Law. pp. xliv and (with Index) 321. 1956. London: Butterworth & Co. (Publishers), Ltd. £2 net.

The Elements of Roman Law with a translation of the Institutes of Justinian. Fourth Edition. By R. W. LEE, D.C.L., F.B.A., Reader in Roman Law of the Inns of Court. pp. xxviii and (with Index) 499. 1956. London: Sweet & Maxwell, Ltd. £1 10s. net.

Capital Punishment as a Deterrent and the Alternative. By GERALD GARDINER, Q.C. pp. 95. 1956. London: Victor Gollancz, Ltd. 6s. net.

NOTES OF CASES

These Notes of Cases are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible, the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

AUSTRALIA: DEATH DUTY: CONSTITUTIONAL VALIDITY OF STATE ACT: RELEVANT TERRITORIAL CONNECTION

Johnson and Others *v.* Commissioner of Stamp Duties (and cross-appeal); Perpetual Trustee Co., Ltd. *v.* Same; Forster and Another *v.* Same

Viscount Simonds, Lord Oaksey, Lord Reid, Lord Keith of Avonholm, Lord Somervell of Harrow. 31st January, 1956

Appeals from the Supreme Court of New South Wales.

By his will the testator, Frank Johnson, who died in 1936 domiciled in New South Wales, leaving property within that State, provided *inter alia*. that the trustees of the will, the appellants, should hold the net income from his residuary estate upon trust to pay one-third of the income to his wife during her life and to divide the residue of the income (including, after the death of his wife the income to which she was entitled) into four equal parts and to pay one of such parts to each of his four children for life, and upon trust as to the *corpus* of the residuary estate for such of the issue of the four children as should be living at the death of such children. At the date of the death of the testator's wife, who died domiciled in New South Wales in 1952, the residuary estate of the testator vested in the appellants comprised real estate in that State and personal estate which was part located in New South Wales and part in the State of Victoria. The children of the testator were all living at the date of the death of the wife, and were all domiciled and resident in New South Wales. Questions were raised by the respondent, the Commissioner of Stamp Duties, whether any part of the property included in the estate of the testator in which his wife had an interest limited to cease on her death was liable to duty under the Stamp Duties Act, 1920–52, of New South Wales, which by s. 102 (2) (*g*) provided for the imposition of death duty in respect of "any property in which the deceased or any other person had . . an estate or interest limited to cease on the death of the deceased . . . to the extent to which a benefit accrues or arises by cesser of the limited interest . . ." It was contended for the appellants, *inter alia*. that s. 102 (2) (*g*), in that it might extend to property of the deceased outside the State, had no such relevant territorial connection with the State as to make it "a law for the peace, welfare and good government of New South Wales" (the Constitution Act, 1902, of N.S.W., s. 5) and was *ultra vires*. The Supreme Court of New South Wales, from whose decision the present appeal was brought, held that that part of the testator's property in which the wife had had a limited interest and which was situated in the State was liable to duty. Two other appeals, both from the same judgment of the Supreme Court, and in which the same question arose, were heard by the Judicial Committee together with the first appeal.

LORD KEITH OF AVONHOLM, giving the judgment, said that in their lordships' view the Supreme Court were right in holding that s. 102 (2) (*g*) extended only to property within New South Wales and that so construed it had sufficient relevant territorial connection with the State to be valid. On the assumption that the property in which the limited interest was had could be clearly identified as being in the State at the death of the wife, there was a sufficient territorial connection with the State. It was the benefit derived through the property by the cesser of the life interest that was taxed, and if the property was inside the jurisdiction at the date of death it was immaterial what were the circumstances attendant on the creation and enjoyment of the limited interest. The property enjoyed the protection of the State's laws, and fiscal legislation taxing it could be regarded as a law for the peace, welfare and good government of the State. The property within the State was therefore dutiable. With regard to that part of the personal property of the testator which was outside the State at the date of the wife's death, the nexus of domicile was completely irrelevant, and in so far as s. 102 (2A)—which provided for the inclusion in the dutiable estate of a deceased person of "all personal property situate outside New South Wales at the death of the deceased, when . . . (*c*) such personal property would, if it had been situate in New South Wales, be deemed to be included in the estate of the deceased by virtue of the operation of para. (2) of this section"—purported to extend the operation of para. (*g*) it was invalid. The domicile of the wife in the State at the date of her death was a quite insufficient ground by itself to make good the lack of any other connection with the State. Further, s. 144—the severance section—did not operate to save s. 102 (2A) in its application to para. (2) (*g*) in cases where some other element than domicile was present which would give a sufficient nexus within the State, such as the presence of the remainderman. The part of the estate outside the State was accordingly not dutiable. The three appeals, and the cross-appeal, would all be dismissed. The appellants in the first appeal and the cross-appeal must bear the costs of their respective appeals. The appellants in the other two cases must also pay the costs of their appeals, but their lordships directed that, on taxation, those appellants' costs should not be increased by the fact that at the hearing the appeal and the cross-appeal in the first case were heard at the same time.

APPEARANCES: *Sir Garfield Barwick*, Q.C., and *K. S. Jacobs* (*Bell, Brodrick & Gray*); *H. A. Snelling*, Q.C., S.-G. for N.S.W., *R. Else-Mitchell*, Q.C., and *K. J. Holland* (*Light & Fulton*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[2 W.L.R. 454**

House of Lords

NEGLIGENCE: UNPROTECTED HATCHWAY ON SHIP

Morris *v.* West Hartlepool Steam Navigation Co., Ltd.

Lord Morton of Henryton, Lord Porter, Lord Reid, Lord Tucker and Lord Cohen

31st January, 1956

Appeal from the Court of Appeal ((1954), 2 Ll. L.R. 507).

In a grain ship at sea, after the holds had been made ready to load, the upper deck hatches were battened down, but the 'tween deck hatch covers were left off and no guard-rail was erected round the hatchway. Timber was stored in the 'tween decks leaving a space about twelve feet broad beside the hatchway. A seaman sent down to fetch some timber from the 'tween decks fell forty feet into the hold for some unexplained reason and was injured. There was evidence that on this ship it was quite usual for men to be sent down to the 'tween decks after the making ready of the hatches had been completed and the deck hatches had been battened down. In an action by the seaman against the shipowners, alleging negligence on their part as the cause of his injury, they relied on evidence to suggest that there was a general practice in ships at sea not to erect guard-rails in similar circumstances. Streatfeld, J., gave judgment for the seaman for £10,960 damages. The Court of Appeal reversed his decision. The seaman appealed to the House of Lords.

LORD MORTON OF HENRYTON, in a dissenting opinion, said that in *Paris* v. *Stepney Borough Council* [1951] A.C. 367, 382, Lord Normand meant to say that, in considering whether a precaution was so obviously wanted that it would be folly to neglect to provide for it, the court must look at the matter from the standpoint of the reasonable and prudent man. On the evidence, for forty years guard-rails had never been put up at sea in like circumstances. The question was whether a reasonable and prudent shipowner would have thought before the accident that a guard-rail was such a precaution. The evidence fell far short of this.

LORD PORTER, also dissenting, said that there was no evidence that guard-rails were ever erected at sea in any grain ship. The question was whether a reasonably prudent shipowner would have foreseen the danger of this accident and provided against it. A twelve foot passageway was not a danger to a seaman. The evidence seemed to establish that the existence of such a danger would not have occurred to a seaman.

LORD REID said that a seaman might encounter a variety of grave and inescapable perils, and in comparison the risk to which the appellant was subjected was very small. But a shipowner was not under any less duty than an occupier of

premises on land to eliminate unnecessary risks so far as was reasonable and practicable. In some cases it might be open to an employer to say that, although the accident showed that there was in fact a risk to a man who was not negligent, the kind of risk was such that it could not reasonably have been foreseen before the accident. That could not be said here. For a young and active seaman the risk might be small, but there were so many ways in which a man might slip or lose his balance without that being solely due to his negligence that a prudent employer was not entitled to assume that there was no risk of accident. The respondents relied on the statement of the law by Lord Dunedin in *Morton* v. *William Dixon, Ltd.* [1909] S.C. 807, 809, which had often been approved (see *Paris* v. *Stepney Borough Council, per* Lord Normand, *supra*, and *Gallagher* v. *Balfour Beattie & Co., Ltd.* [1951] S.C. 712). Lord Dunedin's statement must be read with Lord Normand's g'oss on it. The evidence showed that it should have been foreseen at the time of making the hold ready that men might be sent down later in the voyage. As to the practice relied on, if a practice had been generally followed for a long time in similar circumstances and there had been no mishap a reasonable and prudent man might well be influenced by that and it might be hard to say that the practice was so obviously wrong that to rely on it was folly. But an employer seeking to rely on a practice which was admittedly bad must prove that it had been followed without mishap in circumstances similar to his own case in all material respects. Here it was not proved that the circumstances were similar where the practice prevailed. There was no evidence that it was the practice in other ships for men to be sent to the 'tween decks after the making ready of the holds was finished but there was evidence that it was quite usual in this ship. The consequences of an accident were almost certain to be serious, and a reasonable man, weighing these matters, would have said that the precaution clearly should be taken. The appeal should be allowed.

LORD TUCKER and LORD COHEN agreed that the appeal should be allowed. Appeal allowed.

APPEARANCES: *Sir Frank Soskice*, Q.C., and *Michael Lee* (*Neil Maclean & Co.*); *Forrest*, Q.C., and *M. B. Summerskill* (*Holman, Fenwick & Willan*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 177**

CONTRIBUTORY NEGLIGENCE: INJURY CAUSED BY FELLOW WORKMAN: STANDARD OF CARE

Staveley Iron & Chemical Co., Ltd. *v.* Jones

Lord Morton of Henryton, Lord Porter, Lord Reid, Lord Tucker and Lord Cohen

31st January, 1956

Appeal from the Court of Appeal ([1955] 1 Q.B. 474; 99 SOL. J. 43).

A workman suffered personal injuries arising in part from his own error and in part from the mistake of a crane driver, his fellow employee. In an action brought by him against his employers alleging that they were liable for the negligence of the crane driver, Sellers, J., held that the workman's behaviour did not amount to contributory negligence according to the test laid down in *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* [1940] A.C. 152. He then applied the same test to the conduct of the crane driver and, holding that she was not negligent, dismissed the action. The Court of Appeal reversed this decision, holding that the crane driver's mistake was not to be judged by the same standard as that of the workman since, whereas negligence was founded on breach of duty, contributory negligence was not. The employer's duty was a personal duty to take reasonable care for the safety of his servants and the law required a higher standard of care from him than from the injured workman. Accordingly the workman was entitled to damages. The employers appealed to the House of Lords.

LORD MORTON OF HENRYTON said that the appeal raised two questions of fact: (1) Was the crane driver negligent? (2) Was the respondent workman guilty of contributory negligence? A passage in the judgment of Sellers, J., was open to the interpretation that in deciding the question "negligence or no negligence" the court should apply an especially lenient standard of conduct in a case where workmen were collaborating as a team. If the passage bore that meaning his lordship could not agree with it. The crane driver was bound to use that degree of care which an ordinary prudent crane driver would have used in the circumstances. Further, the court had to decide: Was the crane driver negligent? If the answer was "Yes," the employer was liable vicariously for his servant's negligence. If the answer was "No," he was under no liability. Such cases, where an employer's liability was vicarious, were wholly distinct from cases where he was under a personal liability to carry out a duty imposed on him as an employer by common law or statute. Here the crane driver was negligent and contributory negligence was not proved against the respondent. The appeal should be dismissed.

LORD PORTER agreed.

LORD REID, agreeing, said that if the judge's view was that conduct which would amount to negligence if a stranger was injured might not amount to negligence if the person injured was a fellow servant, he could not agree. The abolition of the doctrine of common employment made it necessary to hold that the test of negligence was the same in both cases. It was argued that this view was inconsistent with *Caswell's* case, *supra*, which decided, at least with regard to cases of breach of statutory duty, that what might be called "excusable lapses" did not amount to contributory negligence. It was suggested that two fellow servants might be injured by such lapses on the part of both of them and that, unless the judge was right, each could sue the employer founding on the negligence of the other, but neither could be held guilty of contributory negligence; this, it was said, could not be right. But *Caswell's* case should not be made to apply to negligence as well as contributory negligence. Most of its reasoning was quite inapplicable to anything but contributory negligence. Denning, L.J., in the Court of Appeal in the present case said that an employer's liability might be ranked greater than that of the servant who actually made the mistake. If this meant that the employers could be held liable, although the crane driver was not herself guilty of negligence, his lordship could not accept that view. The crane driver was negligent and there was insufficient evidence that the respondent was negligent.

LORD TUCKER said that the crane driver was negligent and this was a simple case of an employer's responsibility for the acts of his servants done in the course of his employment. As to contributory negligence, the conclusion that the respondent had not precluded himself from recovering damages in full could be fully justified without resort to the doctrine in *Caswell's* case, *supra*. The appeal should be dismissed.

LORD COHEN agreed in dismissing the appeal. Appeal dismissed.

APPEARANCES: *R. M. Everett*, Q.C., and *Arthur James* (*Bell, Brodrick & Gray*, for *Harold Jackson & Co.*, Sheffield); *Beney*, Q.C., and *Turner-Samuels* (*W. H. Thompson*).

[Reported by F. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 479**

Court of Appeal

PRACTICE: MAINTENANCE OF INFANTS: LEAVE TO APPEAL TO COURT OF APPEAL: MEANS OF MOTHER

***In re* W—— (Infants); *In re* Guardianship of Infants Acts, 1886-1925**

Evershed, M.R., Birkett and Romer, L.JJ. 16th January, 1956

Motion for leave to appeal notwithstanding time expired.

The Supreme Court of Judicature (Consolidation) Act, 1925, s. 31, provides: "(1) No appeal shall lie . . . (*i*) without the leave of the judge or of the Court of Appeal from any interlocutory order or interlocutory judgment made or given by a judge, except in the following cases, namely—(i) where the liberty of the subject or the custody of infants is concerned." The Guardianship of Infants Act, 1925, s. 3, provides: "(1) The power of the court under s. 5 of the Guardianship of Infants Act, 1886, to make an order as to the custody of an infant and the right of access thereto may be exercised notwithstanding that the mother of the infant is then residing with the father of the infant. (2) Where the court under the said section as so amended makes an order giving the custody of the infant to the mother, then, whether or not the mother is then residing with the father, the court may further order that the father shall pay to the mother towards the maintenance of the infant such weekly or other periodical sum as the court, having regard to the means of the father, may think reasonable." This was an application by a mother for leave to appeal, notwithstanding that the time had

expired, from an order of Roxburgh, J., dismissing her appeal from the variation by justices of an order made by stipendiary magistrates as to the custody and maintenance of two infants. By the variation the amount payable by way of maintenance in respect of each infant was reduced from 30s. to 22s. 6d. a week.

On the hearing of the motion the court heard argument on the questions: (*a*) whether it was necessary to obtain leave to appeal; (*b*) whether by virtue of the provisions of s. 3 (2) of the Guardianship of Infants Act, 1925, a court, in assessing the amount of maintenance, was entitled to take into account the means of the mother.

Counsel for the respondent was not called on to argue.

EVERSHED, M.R., said that the motion, which sought leave to appeal notwithstanding that the time had expired, had raised two questions of some general significance. There was no difficulty on the mere question of the time of the application; proper steps to appeal to the Court of Appeal within due time had been taken. The first point of substance was whether any leave to appeal was required at all. That question depended on the true construction of s. 31 of the Supreme Court of Judicature (Consolidation) Act, 1925. Counsel for the applicant had rightly conceded that the order of Roxburgh, J., was an interlocutory order (*Chinchen* v. *Chinchen* [1950] W.N. 22 (C.A.); *In re Whittle (an Infant)* [1953] 1 W.L.R. 1405 (C.A.)). But it was argued for the applicant that although the matter of custody was not debated before the justices (and not, therefore, before Roxburgh, J.), still the order was one where the custody of infants was "concerned." In his (his lordship's) judgment, Roxburgh, J., was not in any true sense "concerned" with the custody of the infants at all; the judge was not asked to consider that matter; and the custody was left, by consent of both parties, with the mother; no question arose before the judge which in any way interfered in this respect with the effect of the original order. In his (his lordship's) judgment, beyond a peradventure this was an interlocutory order and, not being one within s. 31 (1) (*i*) (i) of the Supreme Court of Judicature (Consolidation) Act, 1925, leave was required in order to challenge Roxburgh, J.'s order in the Court of Appeal. In the circumstances leave would not be granted. But he (his lordship) would state his view as to the correct interpretation of s. 3 of the Guardianship of Infants Act, 1925, for the applicant had sought leave, *inter alia*, to argue the question of the competence of the court in such cases to pay any regard to the means of the mother. In a sentence, the argument for the mother had been that the express reference in s. 3 (2) to "the means of the father" necessarily excluded reference to the means of any other person. He (his lordship) did not agree with that view, but he accepted the reasoning of Roxburgh, J., himself in the earlier case of *In re T. (Infants)* [1953] Ch. 787.

BIRKETT and ROMER, L.JJ., delivered concurring judgments.

APPEARANCES: *V. B. Watts* (*Rhys Roberts & Co.*, for *C. James Hardwicke & Co.*, Cardiff); *J. H. Boraston* (*Vizard, Oldham, Crowder & Cash*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] **[2 W.L.R. 493**

FACTORY: WIRE-DRAWING MACHINERY: NO DUTY TO FENCE WIRE IN MACHINE

Bullock *v.* G. John Power (Agencies), Ltd.

Denning, Morris and Parker, L.JJ. 20th January, 1956

Appeal from Stable, J.

A workman in a factory was killed by being struck on the head by the end of a length of wire which was being reduced in diameter by being pulled through a die under pressure and wound round a revolving drum. The drum had a guard to prevent the wire from flapping out at the side. In an action by the widow for damages for negligence and breach of statutory duty to fence every dangerous part of any machinery under s. 14 (1) of the Factories Act, 1937, the trial judge found that the end of the wire had in some way ridden up over the top of the guard and had struck the workman on the head. He held that there was no negligence at common law, but that there had been a breach of the statutory duty to fence since the receiving drum plus the wire constituted a dangerous part of machinery. The employers appealed.

DENNING, L.J., said that in *Nicholls* v. *F. Austin (Leyton), Ltd.* [1946] A.C. 493, the House of Lords had pointed out that s. 14 itself drew a distinction between parts of machinery on the one hand and materials in motion in it on the other. In the present case the judge had held that the revolving drum plus the wire was a dangerous part of machinery. His lordship could not agree with that. For the employers it had been argued that the wire was material in motion in the machine and so did not come within the obligations of the Act. For the plaintiff it was said that the pulling part of the wire was temporarily part of the machine while the part being pulled through the die was material. This was too fine a distinction for the court to adopt. The truth was that the whole piece of wire was being worked on in this machine. It was material in the machine and not part of the machinery. The Act did not require material to be fenced. His lordship added that if the wire could be considered as part of the machine he himself would have regarded it as a dangerous part; but the court was bound by the House of Lords' decision in *Nicholls'* case to hold that it was not part of the machine. The appeal should be allowed.

MORRIS, L.J., concurring, said that the suggested distinction between the wire which had passed through the die and was on the drum and the wire which still remained to pass through the die was unreal and artificial.

PARKER, L.J., also concurring, said that the mere fact that material was firmly attached to a machine could not make it part of the machine. The wire could not be divided up as partly raw material and partly performing the function of the machine. Appeal allowed.

APPEARANCES: *John Thompson*, Q.C., and *E. G. H. Beresford* (*E. P. Rugg & Co.*, for *Buller, Jeffries & Kenshole*, Birmingham); *R. F. Levy*, Q.C., and *George Heron* (*Rabnett, Conway & Co.*, Birmingham).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 171**

HOUSING REPAIRS AND RENTS ACT, 1954: DECLARATION AS TO REPAIRS: ALLEGED FRAUD: TIME FOR CHALLENGE

Lazarus Estates, Ltd. *v.* Beasley

Denning, Morris and Parker, L.JJ. 24th January, 1956

Appeal from Lambeth County Court.

A tenant was served with a notice of increase of rent under the Housing Repairs and Rents Act, 1954, together with a declaration purporting to comply with the provisions of the Act, declaring that work of repair to the value of £566 had been carried out in the specified period. The tenant did not challenge the declared value of the repairs in the county court under para. 4 of Sched. II within twenty-eight days of receiving the notice, but did not pay the increase of rent. The landlords sued her in the county court for the arrears, and by her defence the tenant alleged, *inter alia*, that the declaration was fraudulent in that, as to £300 of the £566, no such work of repair had been carried out. The county court judge gave judgment for the landlords, holding that after the expiry of the twenty-eight-day period he was precluded from hearing evidence as to the alleged fraud by the terms of para. 5 of Sched. II. The tenant appealed.

DENNING, L.J., said that, in order to justify an increase in rent, the Act, by s. 23 (1) (*b*), required the landlord to produce "satisfactory evidence" that he had done work of repair to the required value during the appropriate period; and he must produce it "in accordance with the Second Schedule." That schedule showed that the tenant could insist on satisfactory evidence, at any rate if he acted within twenty-eight days, by applying to the county court. If the tenant let the twenty-eight days slip by, para. 5 of Sched. II then provided that the service of the declaration was itself to be treated as the production of satisfactory evidence that the work specified in it had been done. That meant that the landlord could rely on his own word as satisfactory evidence. But his lordship did not think that it meant that his word could not be challenged at all and that it was conclusive for all purposes. The court was concerned only with the point: Could the declaration be challenged on the ground that it was false and fraudulent? It could clearly be challenged in the criminal courts. But the landlords had argued that the declaration could not be challenged in the civil courts at all, even though it was false and fraudulent, and that they could recover and keep the increased rent even though it was obtained by fraud. If that argument was correct, landlords would profit greatly from their fraud. His lordship could not accede to that

argument for a moment. No court in the land would allow a person to keep an advantage which he had obtained by fraud. Fraud unravelled everything. If this declaration was proved fraudulent it was a nullity and void and the landlords could not recover any increase of rent by virtue of it. His lordship would allow the appeal, and permit the tenant in a new trial to raise the defence of fraud.

MORRIS, L.J., dissenting, said that, there having been no application to the county court by the tenant within twenty-eight days under para. 4 of Sched. II, the result was that "satisfactory evidence" was produced that work of repair to the value specified in Sched. II was carried out during the specified period. Section 23 (1) laid it down that, on the production of the "satisfactory evidence" stipulated, the result was to be that "the rent recoverable from the tenant shall be increased." The wording was compelling, just as was the wording of para. 5 of Sched. II, which provided that, unless the procedure of para. 4 was put into operation successfully, the service with the notice of increase of a declaration as required "shall" be treated as the production of "satisfactory evidence." The tenant's remedy was to have applied to the county court within twenty-eight days of the service of the documents upon her. It was just as much too late for her now to attack one figure in the declaration, even though she alleged that it was fraudulently inserted, as it would be for her to attack a figure on the ground that it was excessive or was erroneously or mistakenly or carelessly overstated. The matter depended entirely on the language of the Act. He would dismiss the appeal.

PARKER, L.J., concurring with Denning, L.J., said that the question was whether the tenant was seeking to challenge the validity on some ground other than that repairs had not been carried out during the period specified to a value not less than that specified. His lordship thought that she was. No doubt it could be said that the real question was whether repairs to the value specified had in fact been done, and that proof of fraud in the making of the declaration was merely proof of the quality or motive of the act. Nevertheless that quality, if proved, vitiated all transactions known to the law of however high a degree of solemnity. Appeal allowed.

APPEARANCES: *R. Gavin Freeman* (*Robert K. George*); *H. Heathcote-Williams*, Q.C., and *George Dobry* (*Chandler and Creeke*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[2 W.L.R. 502**

CHARTERPARTY: SEAWORTHY TRIM: "ANY EXPENSE": "HOMOGENEOUS" CARGO

Chandris *v.* Union of India

Denning, Hodson and Morris, L.JJ. 25th January, 1956

Appeal from Devlin, J.

The seaworthy trim clause of the "Austral" charterparty provides: "If the option of ordering the vessel to discharge at two ports is not exercised . . . before loading has commenced, any expense incurred by the shipowners at the first port of discharge in shifting, discharging and/or reloading any cargo . . . for the purpose of putting the vessel into seaworthy trim for the passage to the second port . . . shall be paid by the charterers . . . In the event of the cargo being a homogeneous cargo (i.e., of the same description, quality and mark) the master shall discharge the cargo in such manner as to leave the vessel in seaworthy trim to proceed to the second port of discharge." Under a charterparty incorporating the seaworthy trim clause and other clauses providing for loss of time, a shipowner agreed to carry a cargo of wheat from the Argentine to India. The wheat was all of the same quality and bore no mark nor special description. The charterers elected to load it in bulk, but the ship's master required part of it to be supplied in bags. The charterers, who had an option of requiring discharge at two ports, exercised it during the voyage, and part of the cargo was discharged at Cochin and the rest at Bombay. The part discharge at Cochin was completed at 4.30 p.m. on a Saturday, but the ship did not sail for Bombay until twenty-one hours later owing to the necessity for putting her into seaworthy trim. That involved, *inter alia*, wages for crew's overtime in shifting the ship and superintending the restowage of the cargo. The shipowners claimed as "expense" under the seaworthy trim clause (*a*) moneys spent on crew's overtime, and (*b*) an amount for loss of twenty-one hours ship's time. She claimed alternatively demurrage and/or damages for detention, calculated by agreement on the basis of the demurrage rate of £200 for twenty-four hours, which figure was also agreed as a reasonable amount for damages for detention, if any. The charterers denied liability. Devlin, J., held that "any expense" in the seaworthy trim clause included crew's overtime and loss of twenty-one hours ship's time, and awarded the shipowner £175 for that loss of time, based on the agreed figure for demurrage or damages. The charterers appealed.

DENNING, L.J., said that under the seaworthy trim clause the shipowner could recover "any expense incurred in shifting the cargo." That, his lordship thought, included the crew's overtime. But in his opinion the shipowners could not recover any compensation for the twenty-one hours' delay, because the word "expense" meant money spent out of pocket and did not include loss of time, at least in this charterparty, which contained numerous clauses drawing a distinction between "expense" on the one hand and "time occupied" on the other. If "time" was to be included in "expenses" the parties must say so. Otherwise it was not recoverable. Nor could the time count as lay days as time occupied in discharging the cargo, for the discharge was completed as soon as the last grain of the part discharge of wheat was put off at Cochin. The time occupied in trimming the ship thereafter was another matter altogether. On the other hand, his lordship did not think that this cargo was "homogeneous" such as to bring it within the second sentence of the "Austral" clause; a cargo of wheat partly in bulk and partly in bags at the time of discharge, albeit at the master's direction and not at the charterers' choice, was not a "homogeneous" cargo. The appeal should be allowed in part, and the shipowner should recover for the overtime and no more.

HODSON, L.J., concurring, said that the primary meaning of the word "expense" was actual disbursements; and he would give the words their primary meaning in the context of the "Austral" extract and the charterparty as a whole.

MORRIS, L.J., said that the shipowners were entitled to receive as "any expense" under the clause a sum representing the expense necessarily and solely incurred at Cochin in shifting the cargo, which sum should include the expense of running and maintaining the ship while shifting the cargo and carrying out operations incidental to the trimming of the ship; but the phrase did not in this charterparty cover loss of time as such, nor loss of the shipowner's profit or loss of earnings in respect of the delay; and accordingly the amount to which the shipowner was in his lordship's opinion entitled could not be measured on the basis of the demurrage rate nor by reference to what would be a reasonable figure for damages for detention. Calculation of the amount recoverable would necessitate further inquiry. Appeal allowed in part. Leave to appeal to the House of Lords granted.

APPEARANCES: *A. A. Mocatta*, Q.C., and *Michael Kerr* (*William A. Crump & Son*); *Eustace Roskill*, Q.C., and *B. E. Eckersley* (*Constant & Constant*).

[Reported by Miss M. M. HILL, Barrister-at-Law] **[1 W.L.R. 147**

Queen's Bench Division

ROAD TRAFFIC: DRIVER UNDER AGE ISSUED WITH LICENCE: MEANING OF "DISQUALIFIED"

Mumford *v.* Hardy and Another

Lord Goddard, C.J., Stable and Ashworth, JJ.

18th January, 1956

Case stated by Essex justices.

A policy of insurance in respect of a motor car provided indemnity to any person driving it on the policy holder's order or with his permission, provided that such a person held a licence to drive such a motor car or had held and was not disqualified for holding such a licence. The son of the policy holder, aged 15, who had obtained a licence by falsely stating his age, drove the car with the permission of the policy holder. The Road Traffic Act, 1930, provides by s. 35 (1) that it shall not be lawful to use or permit the use of a motor vehicle unless there is in force a policy complying with the Act. By s. 7 (4): "If any person who . . . is disqualified for holding or obtaining a licence applies for or obtains a licence . . . that person shall be liable on summary conviction to imprisonment . . . and a licence obtained by any person disqualified as aforesaid shall be of no effect." By

s. 9 (5): "a person prohibited . . . by reason of his age from driving a motor vehicle . . . shall . . . be deemed to be disqualified . . . for holding or obtaining any licence . . ." On informations being preferred against the son and father under s. 35, evidence was given that the insurers, by reason of the decision in *Edwards* v. *Griffiths* [1953] 1 W.L.R. 1199, considered themselves on risk. The justices were of opinion that the son held a licence within the meaning of the policy, and dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that in *Edwards* v. *Griffiths, supra*, the court decided that a provision in a policy that a driver must not be disqualified meant disqualified by an order of the court; in that case the person concerned was not under age, but had been refused a licence on the grounds of health. But by s. 9 (5) a person under seventeen was deemed to be disqualified, and by s. 7 (4) a licence obtained by such a person was void. The considerations in the present case were quite different from those in *Edwards* v. *Griffiths*, and the case must go back to the justices with an intimation that the offences had been proved.

STABLE and ASHWORTH, JJ., agreed. Appeal allowed.

APPEARANCES: *W. M. Howard* (*Sharpe, Pritchard & Co.*, for *D. Emrys Morgan*, Chelmsford).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 163

RIGHT OF WAY: DEDICATION: PUBLIC USE OF FOOTPATH OVER PRIVATE LAND

Fairey *v.* Southampton County Council

Lord Goddard, C.J., Hilbery and Stable, JJ.

24th January, 1956

Case stated by Hampshire quarter sessions.

The Rights of Way Act, 1932, provides by s. 1 (1): "Where a way . . . has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, such way shall be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate that way . . ." By subs. (3), a notice put up by an owner inconsistent with such dedication is sufficient evidence to negative an intention to dedicate. By subs. (6): "Each of the respective periods of years mentioned in this section shall be deemed and taken to be the period next before the time when the right of the public to use a way shall have been brought into question by notice as aforesaid or otherwise." A landowner applied to quarter sessions under s. 31 of the National Parks and Access to the Countryside Act, 1949, for a declaration that no right of way existed over a footpath on his land. Quarter sessions found that the path had been used by the public without interruption and without objection by the landowner's predecessors in title from 1885 to 1931 but that there was not sufficient evidence to show whether the path had or had not been dedicated during that period; that on an occasion in 1931 the then owner objected to the use of the path by the public, other than local residents, and that thereafter he and the present landowner successively had told all such people that they had no right to be on the land and that no one questioned their right so to do. There was no evidence of an intention to dedicate the path since 1931, but quarter sessions determined that a public right of way over the land was deemed to have been dedicated by virtue of s. 1 (1) and (6), and accordingly dismissed the application. The landowner appealed.

LORD GODDARD, C.J., said that the first question was whether the date when the right of the public to use the way was brought into question was in 1931, or in 1953 when the present dispute began. The landowner contended that a matter was only brought into question when an assertion made on one side was disputed on the other; but the language of the Act was satisfied if an owner told a person to get off his land, or put up a notice. Accordingly the public had used the way for more than forty years before 1931, when the question was raised for the first time. The next question was whether the Act was retrospective or not. It had been argued that though the twenty-year period might begin before the Act came into force, it must determine after because the Act should not be construed retrospectively as against the landowners. The decision in *A.-G. and Newton Abbot R.D.C.* v. *Dyer* [1947] Ch. 67, that the Act was retrospective, appeared to be right, so that the time might both begin and end before the Act came into force. A procedural Act, including one mainly concerned with evidence, might often act retrospectively. The main object of the Act was to substitute a definite period of twenty years user by the public for the necessity of proving the fact of long user from which common-law dedication could be presumed. That being so, it was no objection to say, when the law had laid down that twenty years was the period, that the twenty years would have terminated before the Act came into force.

HILBERY, J., agreed.

STABLE, J., agreed that the right of the public to use the way had been brought into question in 1931, but dissented as to the retrospective effect of the Act. Appeal dismissed.

APPEARANCES: *P. Lamb*, Q.C., and *J. P. Widgery* (*Ashurst, Morris, Crisp & Co.*); *J. Scott Henderson*, Q.C., and *M. G. Polson* (*Theodore Goddard & Co.*, for *G. Andrew Wheatley*, Winchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 517

ROAD TRAFFIC: GOODS VEHICLE: ESTATE CAR CARRYING PROFESSIONAL PHOTOGRAPHIC EQUIPMENT

Taylor *v.* Thompson

Lord Goddard, C.J., Hilbery and Stable, JJ.

26th January, 1956

Case stated by Manchester justices.

By the Vehicles (Excise) Act, 1949, s. 13 (1): "Where a licence has been taken out in respect of a mechanically propelled vehicle at any rate under this Act and the vehicle is at any time while the licence is in force used in an altered condition or in a manner or for a purpose which brings it within, or which if it was used solely in that condition or in that manner or for that purpose would bring it within, a class or description of vehicle to which a higher rate of duty is applicable under this Act, duty at that higher rate shall become chargeable in respect of the licence for the vehicle." Section 27 (1): "The expression 'goods vehicle' means a mechanically propelled vehicle . . . constructed or adapted for use and used for the conveyance of goods or burden of any description, whether in the course of trade or otherwise." By the Finance Act, 1952, s. 7 (2): "From the beginning of the year 1953, a vehicle which is constructed or adapted for use for the conveyance of goods or burden, but is not used for the conveyance thereof for hire or reward or for or in connection with a trade or business . . . shall not be treated for the purposes of the Vehicles (Excise) Act, 1949, as a goods vehicle." The defendant, the director of a firm of photographic printers and free-lance photographers, used a Standard van estate car to convey photographic equipment in connection with his business. Excise duty had not been paid at the rate appropriate to a goods vehicle required by s. 13 (1) of the Act of 1949, and an information was preferred against him accordingly. The justices were of opinion that the vehicle was neither constructed nor adapted for the carriage of goods, and dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that it was plain that an estate car came within the definition of a goods vehicle in s. 27 (1) of the Act of 1949, as it was constructed or adapted for use for the conveyance of goods, and it was impossible to argue otherwise. The effect of the relevant statutory provisions was that an estate car or shooting brake attracted a higher rate of duty if used for the conveyance of goods either for hire or reward or in connection with a trade or business. If a person carried nothing in it but his own luggage or his own farm produce for his own use, and nothing which had to do with his trade or business, he committed no offence if he licensed it merely as a private car. But if he carried goods, which meant anything in connection with his trade or business, then the vehicle became a goods vehicle and had to bear the higher rate of duty. The question had been raised whether the conveyance by a doctor of his bag of instruments or by a lawyer of his books and robes had the same consequences; it was not necessary to decide that question for the purposes of the present case, but it might be so. The case must go back with the direction that an offence was proved.

HILBERY and STABLE, JJ., agreed. Appeal allowed.

APPEARANCES: *Rodger Winn* (*Treasury Solicitor*); the defendant did not appear and was not represented.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 167

Probate, Divorce and Admiralty Division

DIVORCE: REVIVAL OF CONDONED OFFENCE

Cundy *v.* Cundy, Smith and Finch

Mr. Commissioner Blanco White, Q.C. 13th December, 1955

Defended petition for divorce.

The parties were married in 1921 and had five children, the parentage of a child born in 1932 being in dispute. In 1927, at the age of twenty-four, the wife committed adultery with one man; in 1931 she committed adultery with another. The parties continued to live together, to share the same bed, and to have marital intercourse until 1949, although from 1941 there was no affection between them. The husband left the home in 1949. A charge of adultery brought by him in 1950 in a court of summary jurisdiction was dismissed without the wife being called on to give evidence. The husband filed a petition for divorce on the grounds of (constructive) desertion and of adultery revived by subsequent misconduct; the wife by her answer cross-prayed for a divorce on the ground of desertion, admitting the adultery in 1927 and 1931, pleading that it had been condoned and denying that it had been revived. During the course of his judgment, the commissioner, rejecting other allegations as to the wife's behaviour, found that on one occasion in 1950 the wife, who did not protest, had been kissed on the neck by a man who had been helping her in the garden. The question accordingly arose whether that incident was sufficient to revive the condoned adultery.

Mr. Commissioner Blanco White, Q.C., during the course of his judgment, said that it was very hard to find authority as to what degree of impropriety in conduct revived adultery, and formulated his conclusions upon that question as follows: The question whether impropriety of conduct on the part of a wife was sufficient in gravity to revive condoned adultery was ultimately one of fact. There must be taken into consideration (1) the circumstances of the adultery and the light it threw on the character of the wife; (2) the time which had elapsed since the adultery; (3) the behaviour of the wife meanwhile; (4) the behaviour of the husband to the wife; (5) the seriousness of the conduct complained of and its circumstances including the manners and customs of the grade of society to which the parties belonged. The test was whether a jury of reasonable citizens guiding themselves by the foregoing considerations would be of opinion that the conduct complained of was of sufficient gravity to exonerate the husband from his expressed or implied promise to forgive his wife and to entitle him to reassert the adultery as a ground for divorcing her. Applying those principles to the facts which he had found, the commissioner held that the condoned adultery had not been revived and granted the wife a decree *nisi* of divorce. Decree *nisi* on prayer of answer.

Appearances: *L. Jellinek* (*Alan, Edmunds & Phillips*); *S. Ibbotson* (*R. H. Marcus, The Law Society, Divorce Department*).

[Reported by John B. Gardner, Esq., Barrister-at-Law] **[1 W.L.R 207**

LEGAL AID: INCREASE OF DISPOSABLE INCOME

Moss *v.* Moss

Willmer, J. 19th December, 1955

Application as to costs.

A wife was granted a civil aid certificate in respect of proceedings under s. 23 of the Matrimonial Causes Act, 1950. Her application was made on 30th August, 1951. She had previously been granted a certificate in certain Chancery proceedings; and she also successfully applied in April, 1952, for a certificate for proceedings in the Queen's Bench Division under s. 17 of the Married Women's Property Act, 1882. Her contribution in the Chancery proceedings was assessed at £2; in the other two matters at nil. On 22nd October, 1952, she disclosed to the surprise of all present, under cross-examination in the Married Women's Property Act, 1882, proceedings, that she had obtained a lucrative contract for six months as from 6th October, 1952. Information of this was spontaneously and voluntarily communicated by her solicitors to the local legal aid committee on 6th November, 1952. The husband's solicitors had by then already written to that committee. The appropriate area committee, to whom the matter was accordingly referred, communicated with the National Assistance Board; the Board held that there should be no re-assessment in respect of the s. 23 and Chancery proceedings; but the Married Women's Property Act, 1882, certificate was discharged. The Board's decision appeared to have been reached on the basis that it was not competent for them to take into consideration any increase in earnings unless it had occurred within twelve months of the date of application for certificate. The area committee considered themselves bound by the Board's decision; but gave further consideration to the matter when the Legal Aid (General) (Amendment No. 1) Regulations, 1954, gave them wider powers under reg. 11 (2A) to discharge certificates. They decided that it would not be proper in the circumstances by then existing to take any further action. In December, 1954, Willmer, J., who had in May, 1952, found a *prima facie* case of neglect to maintain, made an order as to costs to that date against the husband and, referring the matter to the registrar for consideration of the parties' means, dismissed the summons by consent; but he adjourned the question of costs for the assistance of the Queen's Proctor and in order to enable the area committee to be represented.

Willmer, J., said, that in view of reg. 9 (2) of the Legal Aid (Assessment of Resources) Regulations, 1950, the area committee had rightly decided that the determination by the Board was final upon the question of re-assessment, and that the court was equally precluded thereby from interfering with that assessment. Nor could the court inquire into the decision reached in their discretion by the area committee not to discharge the certificate under reg. 11 (2A). It had been submitted that the wife's certificate ought to be revoked under reg. 11 (4) on the ground that she had failed to disclose forthwith the increase in her income; but in the absence of any time limit in reg. 8 (5) to the communication of such information, the time must be presumed to be one reasonable in all the circumstances, and the present case was not one in which the court should take such action. His lordship said, in regard to the view taken by the National Assistance Board that they had no power to re-determine the wife's means since the change of circumstances had taken place after a lapse of more than twelve months from her application, that that view appeared to have been based upon a misinterpretation of the Legal Aid (Assessment of Resources) Regulations, 1950, Sched. I, Pt. I, reg. 2 (1), and the definition of the "period of computation" in reg. 1 (2). The effect of information being supplied by an assisted person to the area committee as to an increase in means was the same as if it were an original application for a certificate, which should call for the consideration of an entirely new period of computation. After further argument his lordship held that, in the circumstances, there should be no order for costs. Order accordingly.

Appearances: *H. S. Law* (*Booth & Blackwell*); *J. Jackson* (*M. A. Jacobs & Sons*); *Sir Harry Hylton-Foster*, Q.C., S.-G., and *J. R. Cumming-Bruce* (*Treasury Solicitor*); *R. J. S. Harvey* (*The Law Society*).

[Reported by John B. Gardner, Esq., Barrister-at-Law] **[2 W.L.R. 469**

DIVORCE: "ORDINARILY RESIDENT" IN ENGLAND: JURISDICTION

Lewis *v.* Lewis

Willmer, J. 19th January, 1956

Issue as to jurisdiction.

Early in 1951 the parties, who had hitherto lived in England, left for Australia where the wife understood that the husband was to be employed for a temporary but indefinite period. They left the matrimonial home, which was in the wife's name, and her furniture in possession of her parents as caretakers. After the parties reached Australia, circumstances arose as a result of which the wife returned to England, sailing from Sydney on 11th September, 1951, and arriving at Southampton on 4th November, 1951. The husband remained in Australia, the parties never resumed cohabitation, and on 5th October, 1954, the wife filed a petition for divorce alleging that the parties were domiciled in England. The husband, by his answer, claimed an Australian domicile and the wife thereupon amended her petition to allege that the court had jurisdiction, in the alternative, under s. 18 (1) (*b*) of the Matrimonial Causes Act, 1950. It was ordered that an issue be tried as to jurisdiction, for the purpose of which it was assumed that the husband was domiciled in Australia.

Willmer, J., said that the wife had put her case in two ways. On the one hand, she had contended that she had been resident in this country at the moment of filing the petition and that she had always been ordinarily resident in this country. On that basis she had contended that the relatively short period, during which she

and the child of the marriage had been physically in Australia, had not been such a gap as could be regarded as terminating her ordinary residence in this country. In the alternative, it had been contended on her behalf that she had resumed ordinary residence in this country from the moment that her ship had left Sydney. On that alternative basis, if the argument were acceded to, she could get three years of ordinary residence preceding the presentation of the petition. But she could not get three years' ordinary residence if the date that the ship arrived in this country were taken. His lordship referred to *Stransky* v. *Stransky* [1954] P. 428, and to the judgment of Somervell, L.J., in *Macrae* v. *Macrae* [1949] P. 397, 403, and said that he (his lordship) had been very impressed, in the wife's favour, by the fact that the home was her own flat, in which she had her own furniture, where she had left her household goods, and where she had left her parents, so to speak, as caretakers. That all went to confirm her evidence that the stay in Australia had always been intended to be of only temporary duration, and that at the date of departure, and indeed during the term of her residence in Australia, there had always been an intention at some time in the future to return to the matrimonial home in England. In those circumstances, the proper view to take on the facts was that, as in *Stransky* v. *Stransky, supra*, there had never been any real interruption of the ordinary residence of the wife in England; and during the temporary stay in Australia the wife had therefore remained ordinarily resident in England. His lordship said that if he were wrong in that finding, he must consider the question whether the wife had become ordinarily resident in England on the date she had sailed from Australia, or on the date that she had arrived in England. This was not a case of a person boarding a ship bound for a country where he or she had no roots, but of a person returning to the place which had been that party's home and where she had her roots. In those circumstances, even if she had not been ordinarily resident in England throughout, then the fact of her setting foot on board the ship which was to bring her home from Australia was, in its context, to be interpreted as a resumption of ordinary residence in this country. If she had been casually asked by someone else in the course of her voyage home: "What is your ordinary residence?" she would not have said Australia, but would have answered without hesitation: "London." It would be quite artificial to take the view that, during the period of her voyage between Australia and England, this wife, who was no nomad but a person accustomed to live in permanent homes, had no ordinary residence anywhere at all. If she were to be regarded as having an ordinary residence during that period, the only ordinary residence that could be imputed to her in the circumstances of this case was an ordinary residence in this country. Order accordingly.

APPEARANCES: *G. H. Crispin* and *W. J. K. Millar* (*Culross & Co.*); *H. V. Brandon* (*Coleman & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 200

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Food and Drugs (Scotland) Bill [H.C.] [9th February.

Read Second Time :—

Cammell Laird and Company Bill [H.L.] [9th February.
Dentists Bill [H.C.] [7th February.
Dover Corporation Bill [H.L.] [8th February.
Felixstowe Dock and Railway Bill [H.L.] [7th February.
London Necropolis Bill [H.L.] [7th February.
Manchester Corporation Bill [H.L.] [7th February.
Middlesex County Council Bill [H.L.] [7th February.
North-East Surrey Crematorium Board Bill [H.L.] [9th February.
Pontypool and District Water Bill [H.L.] [9th February.
Rhyl Urban District Council Bill [H.L.] [9th February.
Sexual Offences Bill [H.L.] [7th February.
Tyne Tunnel Bill [H.L.] [8th February.
Walthamstow Corporation Bill [H.L.] [8th February.

Read Third Time :—

Children and Young Persons Bill [H.C.] [9th February.
Education (Scotland) Bill [H.L.] [7th February.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Charles Beattie Indemnity Bill [H.C.] [8th February.

To indemnify Charles Beattie, Esquire, from any penal consequences which he may have incurred by sitting and voting as a member of the House of Commons while holding the office or place of member of certain panels constituted in pursuance of the National Insurance (Industrial Injuries) Act (Northern Ireland), 1946, and the National Insurance Act (Northern Ireland), 1946, or of member of an appeal tribunal constituted in pursuance of the National Assistance Act (Northern Ireland), 1948.

Slum Clearance (Compensation) Bill [H.C.] [8th February.

To make additional provision for payments in respect of certain unfit houses subject to compulsory purchase, clearance, demolition or closing orders.

Read Second Time :—

Agriculture (Safety, Health and Welfare Provisions) Bill [H.C.] [6th February.
Barry Corporation (Barry Harbour) Bill [H.C.] [7th February.
Bedford Corporation Bill [H.C.] [7th February.
Bournemouth–Swanage Motor Road and Ferry Bill [H.C.] [6th February.
Bristol Corporation Bill [H.C.] [7th February.
Castle Gate Congregational Church Burial Ground (Nottingham) Bill [H.C.] [6th February.
Chertsey Urban District Council Bill [H.C.] [7th February.
Edinburgh Corporation Bill [H.C.] [7th February.
Ipswich Dock Bill [H.C.] [6th February.
Licensing (Airports) Bill [H.L.] [7th February.
London County Council (General Powers) (No. 2) Bill [H.C.] [7th February.
Newcastle upon Tyne Corporation Bill [H.C.] [7th February.
People's Dispensary for Sick Animals Bill [H.C.] [6th February.
Police (Scotland) Bill [H.L.] [8th February.
Rugby Corporation Bill [H.C.] [7th February.
Scottish Union and National Insurance Company Bill [H.C.] [6th February.
Transport (Disposal of Road Haulage Property) Bill [H.C.] [9th February.
Walsall Corporation Bill [H.C.] [7th February.
West Bromwich Corporation Bill [H.C.] [7th February.

Read Third Time :—

Blyth Generating Station (Ancillary Powers) Bill [H.L.] [6th February.

B. QUESTIONS

LEGAL AID SCHEME

THE ATTORNEY-GENERAL refused to review, with a view to reduction, the contributions now being exacted from persons who were granted legal aid certificates. The Advisory Committee, he said, had recommended that the public money available should go first towards extending the scheme to parts of the Act not yet in force rather than to amending the parts which were already in operation. [6th February.

ADMINISTRATION OF JUSTICE

THE HOME SECRETARY refused a request for a public enquiry to ascertain what further safeguards were needed to ensure that the traditional safeguards of British justice against the conviction and punishment of innocent persons were maintained and strengthened. He did not accept the allegation that public confidence had been impaired. [6th February.

CORNEAL GRAFTING (BEQUESTS)

Sir FRANK MEDLICOTT asked the Minister of Health if his attention had been drawn to the difficulty sometimes experienced in making available sufficiently quickly eyes which had been bequeathed for corneal grafting under the Corneal Grafting Act, 1952; and if, in view of the fact that eyes ceased so quickly to be of value for grafting purposes, greater publicity could be given to the advisability of registering the testator's intention with an ophthalmic hospital and for closer contact between hospitals and testators, so that on the death of the testator immediate action could be taken by the hospitals concerned. Mr. TURTON said that he knew that practical difficulties sometimes prevented hospitals from taking advantage of offers of eyes for corneal grafting. Immediate notification of the appropriate hospital by the doctor or relatives of the testator on his death was the essential factor rather than the registration of his intention in advance. He would consider the question of publicity. [6th February.

STATUTORY INSTRUMENTS

Bankruptcy (Amendment) Rules, 1956. (S.I. 1956 No. 117 (L.1).)

These rules, which come into operation on 10th April next (i.e., the date when the R.S.C. (Appeals), 1955, come into force), revoke rr. 128 and 130 of the Bankruptcy Rules, 1952, and amend rr. 129 and 131. These rules deal with appeals in bankruptcy proceedings, which will in future be regulated by the R.S.C. (Appeals), 1955.

Cutlery Wages Council (Great Britain) Wages Regulation Order, 1956. (S.I. 1956 No. 109.) 8d.

Fire Services (Conditions of Service) (Scotland) Regulations, 1956. (S.I. 1956 No. 121 (S.3).)

Marriages Validity (Cranley Hall, Ilford) Order, 1955. (S.I. 1956 No. 122.)

National Insurance (Industrial Injuries) (Prescribed Diseases) Amendment Regulations, 1956. (S.I. 1956 No. 118.) 5d.

Stopping up of Highways (Gloucestershire) (No. 5) Order, 1956. (S.I. 1956 No. 110.)

Stopping up of Highways (Kent) (No. 3) Order, 1956. (S.I. 1956 No. 102.)

Stopping up of Highways (Kent) (No. 4) Order, 1956. (S.I. 1956 No. 107.)

Stopping up of Highways (Kent) (No. 5) Order, 1956. (S.I. 1956 No. 106.)

Stopping up of Highways (Leicestershire) (No. 1) Order, 1956. (S.I. 1956 No. 108.)

Stopping up of Highways (Northamptonshire) (No. 2) Order, 1956. (S.I. 1956 No. 111.)

Stopping up of Highways (Shropshire) (No. 1) Order, 1956. (S.I. 1956 No. 120.)

Winchester (Water Charges) Order, 1956. (S.I. 1956 No. 134.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Miscellaneous

A number of "Cases in Court" will be discussed by H. W. R. Wade, Fellow of Trinity College, Cambridge, in a B.B.C. Home Service talk on 22nd February. Points to be considered include the following: "Is it an offence to warn your parents that the police are watching them?"; "Does a piece of string in a loaf of bread make it unfit for human consumption?"; and "Is a council house suitable 'alternative accommodation'?"

At the examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court held in November, 1955, the Examination Committee recommended the following as being entitled to Honorary Distinction: *First Class* (in order of merit): (1) J. E. Adams, LL.B. (Bristol); (2) G. W. Quance, LL.M. (Birmingham); (3) A. J. Giles. *Second Class* (in alphabetical order): R. W. Adcock; R. M. Bax, B.A. (Oxon.); A. W. Blundell, LL.B. (Birmingham); M. G. Chate, B.A. (Oxon.); E. M. Ewins, B.A. (Cantab.); C. M. Farrer, B.A. (Oxon.); J. E. Gardner; J. M. Garrett, LL.B. (London); L. A. Goldwater, LL.B. (London); A. K. Griesbach; T. J. F. Halford, B.A. (Oxon.); E. R. P. Hope, M.A. (Edinburgh), LL.B. (Manchester); R. C. Hopton; J. N. Jordan, B.A. (London); J. R. Kenroy; J. D. Kidd; B. M. Kirkham, LL.B. (London); N. W. A. Lang, LL.B. (London); B. J. B. Locke; D. C. Miles, B.A. (Cantab.); G. C. Moore, B.A., LL.B. (Cantab.); C. M. Penrice; J. E. C. Perry; S. Prevezer, M.A. (Cantab.); G. D. Purnell; R. C. Rees, M.A., LL.B. (Cantab.); P. M. Simler; A. C. L. Smith, B.A., LL.B. (Cantab.); G. M. U. Young, B.A. (Oxon.). *Third Class* (in alphabetical order): F. D. Bateson, B.A. (Oxon.); J. J. Bernstein; N. A. Bonham-Carter; M. A. Brown, B.A. (Oxon.); P. B. Buckroyd, B.A. (Oxon.); D. Q. Cheung; E. E. Church; J. D. Clarke; J. F. Eden, B.A. (Cantab.); J. E. Freer; P. J. Gadsden, B.A. (Oxon.); J. G. Golds; K. C. Graham, LL.B. (London); M. I. Green; J. W. Gregg; G. Grimmett; A. Joelson; E. A. Jones; T. G. O. Jones, LL.B. (Liverpool); D. S. Kemp, B.A. (Oxon.); R. O. M. Lovibond, B.A. (Oxon.); J. C. Maddox; R. D. Munrow, B.A. (Oxon.); J. J. Pearlman, LL.B. (London); A. C. Riley; M. B. Sharratt; B. A. Williams, LL.B. (Bristol). The Council of The Law Society have accordingly given Class Certificates and awarded the following prizes: to Mr. Adams, The Clement's Inn Prize, value £40; to Mr. Quance, The Daniel Reardon Prize, value £20; to Mr. Giles, The Clifford's Inn Prize, value £5 5s. The Council have given Class Certificates to the candidates in the second and third classes. One hundred and thirty-nine candidates gave notice for examination.

Wills and Bequests

Mr. James Barrie, J.P., solicitor, of Strathaven, left £161,601.

Major Herbert Clifford Brooke-Taylor, solicitor, of Bakewell, left £31,095 (£23,477 net).

Sir Amos Brook Hirst, solicitor, of Huddersfield, left £14,700 (£14,421 net).

Mr. William George Long, solicitor, of Saxmundham and London, left £79,241.

OBITUARY

MR. E. A. CLIFFORD

Mr. Ernest Alfred Clifford, solicitor, of Speldhurst, died on 7th February. He was admitted in 1905.

MR. C. MARTIN

Mr. Charles Martin, solicitor, of Coventry, has died, aged 89. A former president of the Warwickshire Law Society, Mr. Martin was admitted in 1889.

MR. F. H. NEWTON

Mr. Francis Harry Newton, solicitor, of Nelson, died on 4th February, aged 64. He was admitted in 1928.

MR. W. C. WEST

Mr. William Charles West, solicitor, of Reading, has died, aged 67. He was coroner for East Berkshire and was recently appointed coroner for Maidenhead. Mr. West was admitted in 1927.

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